

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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74-2100

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

- against -

RICHARD PERRY and FORREST GERRY,

Appellants.

*On Appeal from the United States District Court for the Eastern
District of New York.*

**JOINT APPENDICES IN BEHALF OF RICHARD
PERRY AND FORREST GERRY**

Volume II, pp. D-161 - End

JACOB P. LEFKOWITZ

Attorney for Appellant Perry

150 Broadway

New York, New York 10038

(212) 964-4845

FREDERICK P. HAFETZ

Attorney for Appellant Gerry

60 East 42nd Street

New York, New York 10017

(212) 682-8337

(7728)

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1253
3. Over there. Oh, you goin' out with your car?

2. --

3. All right.

2. --

(OFF -558)

(564-602 --~~XXXXXXXX~~ UNINTELLIGIBLE FEMALE VOICES: CHILDREN:
DOGS.)

(626 - PICKS UP BEGINNING AT PAGE 1.)

D-161

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52

or, uh

2. (Cont'g.) -- money either to the house, or to the, uh, racetrack/--

I mean. At one time I -- I gave him a package of ~~XXXX~~ EIGHT-THOUSAND DOLLARS. That's all. Oh! At the track, when I said to my brother-in-law where the fuck did you have this? There's the place I mean.

3. Oh, VALM was there.

2. Wait. X When Gerry's out here that night --

3. Say --

Uh, you gonna use the credit cards there, too?

2. Huh?

3. Wha-- How many credit cards?

2. There's two in there. Right. I'm gonna see if I can get 'em. I'll Don't sell 'em. ask the people some time. They give 'em away./-- Keep ~~xxxxxx~~ that door closed. I said, you can't; it's a fire hazard. It's an exit; right?

3. Yes.

2. "Gotta keep it open. Want me to tell the Fire Department you don't keep it open?" You got me booked comin' and goin'; ain't ya? I says I ain't there /xx goin' down/and gettin' caught. Where? I says never mind. I'm not gonna tell ya. Wants me to go where? Down the Strike Force. (Laughing)

3. (Laughing.) All right. I'll see ya.

2. --

3. What time you goin' out there tomorra?

2. One o'clock. I'm goin' over the house/and speak to my brother.

3. Want me to pick you up and I'll take you over there?

2. Where?

DEFENDANTS'
-27-74 EXHIBITS MMM 73 CR 1068
Pollack and Symore 4-21-74

*all conversation
with Pollack omitted
Pollack. got the tape
if you*

(NOISE)
VOICE

You know -- David work there --

FEMALE VOICE

Oh yeah.

Is there any contract there?

(NOISE)

NOTE: F.B.I. transcripts of this portion of the tape indicate voice one is Pollack's, voice two is Rothstein, and voice three is Pullman.

(MUSIC)

MALE VOICES

1. Now, again. You know ~~Carney~~^{Carney} asked you did you get the money, ^{at} and Symore interpreted that do you mean money from the paddock area and you stated that it ~~would be~~^{had been} taken care of.

Do you remember anything?

2. wait -- take four -- that you owed ~~Carney~~^{Connie} some money sometime; that you borrowed money from ~~Carney~~^{Connie}.

3. I borrowed money from ~~Carney~~^{Connie}? ~~Carney~~^{Connie} been broke through this whole, God-damn thing.

2. Now, let me a-- tell you something, 'cause I loaned money to ~~Carney~~^{Connie} that night and she says --

3. Do you remember that night?

2. Saturday night.

3. Saturday night?

2. Yeah and, uh, uh and she came over to me says, uh, lend me two hundred 'till the bear comes rou--He'll be right up. He's downstairs.

2. (Cont'g) I gave her the two hundred. Then Junior was standin' there.

He said to you did everything come out all right? He says yeah, I got the money or somethin' like that. Then you took Connie on the side. You gave her the money. She come --

cash--

1. Says the/~~cash~~ --

2. No. No.

3. Silver --

third or

2. No. It was like the/second race right after the double or somethin'--

Youx were 1-1-late some time. To tell you the truth --

~~No I didn't give you the extra money~~

3. I gave her two hundred.

2. Yeah, she ga--

me, to

3. She gavexit to/you, supposedly?

2. Not supposedly. She did.

1. Oh, she did give it to you.

2. I mean I lend'd her the money. It was for the daily double. She--Sh--

said she was short. So I --

3. And I got there late.

2. You got there around the fourth race.

what

3. Well,/~~any~~ the Hell has that got to do with this?

1. Well, now the question is this: Symore interpreted the statement --

3. She might have borrowed the money off me just like she borrowed it off you. I can't remember like th--

1. Well, did you get any moneyx out of the paddock for Kerry?

3. I was never in the paddock.

2. Well. We couldn't go in the paddock. He could wait for me outside.
3. I never went near the paddock.
2. He can't never go in the paddock. Neither can I.
3. Nobody was off near a paddock.
1. Fine. Symore then got ~~misint~~ missinterpreted it. It was possible
the --
So--
2. / (LAUGHING) ~~xxxx~~
3. I mean. I never asked him if he went to the paddock. Did I ever ask
you if you went to the paddock?
2. No. He, you know's better than that.
1. I'm not arguing with anybody. I'm not arguing. Yes. We're just
tryin' to think --
2. Oh, wait a minute. Pick up there?
3. How many's you gonna mi--
2. Junior. I'm gonna stap.
3. How many lines you goin' to ~~stap~~ tap?
2. I mean to turn --
3. Just what Lee knows. So I/ ~~stap~~ give ya --
2. No. No. No.
3. You know what I mean?
2. No -- ~~stap~~
3. Jus' --
2. -- goin' there. I'm gonna tell the fuckent ~~truth~~ truth --
3. You tell one story. Don' lemme go tell another story.

2. I'm gonna tell the fucken truth.

3. In Don't you a story.
Keep my stories. I'm

2. ~~I'm gonna tell you~~ gonna tell you right now. I'm -- When I drove that son of a bitch to the west-- to that hotel, that one day, after he got clipped.

3. Clipped for what?

2. He got robbed on a Sunday. The car was damaged. He called me up to pick him up. I drove him to the, uh, to the Raceway Motel. We pulled in the parking lot and ^{waited} ~~waited~~ a coupla minutes. He got outa the car. Hancock come runnin' across. I had two fucken tickets in my pocket. I remember they were total -- They were FOUR THOUSAND DOLLAR tickets. To be honest with you, I was lookin' to beat him with the tickets. He came over to me after he talked to Turcotte. He says lemme have the OTB ticket. I took the OTB tickets out. I gave it to him. The truth is, and Mike, I've been goin' through my mind ~~99~~ -- I did not see him that bastard the ticket.

1. He can't say you did that.

2. But he did gi-- -- I did

1. Because George Connie told me Turcotte came running over to Gary.

2. Because it was only --

3. It was. That's a small discrepancy. We can't -- (LAUGHING).

2. And when I went up to the room with all that fuckin' money and I brought up money --

1. Yeah.

2. He had -- I had always called up, 'cause I didn't want to walk into

1. a gun or somethin'. I figured, listen; somebody could have him in the room and that guy that died,-- he was always in the room. Frank-- Frankovitch, whatever his name was.

1. Right.

2. And One time I walked in there, there was an old man Jimmy. He was there and another time there was two guys in there that I never seen but I believe they came outa the stables, because they had the, the jackets.
/jazz You know, the ridin' jackets. They coulda been joggers or trainers or whatever they were; right?

3. I don't know who they were.

2. I mean --

3. You've seen 'em.

2. No. I never -- I-- uh, they weren't familiar to me. Yeah. Wait.

1. They wore the outfits of people who work around the horses.

3. You drove me crazy anyway. I ~~am~~ mean --

2. What?

3. One week you seen somebody. The next week --

2. No. No. No.

3. -- you didn't see somebody.

2. I seen guns. I seen guns.

3. You got me insane. I mean, I heard --

2. What'd --

*3. -- this story eight different times already from you.

2. You want to know the truth? I'm tellin' the truth.

1. You were --

2. What?
3. What?
1. Which I think Symore is finally putting it together.
2. Finally putting it together?
1. Yes.
2. Uh. The truth is I do want to take the stand. All right, Bud?
3. Sure. You know.
2. But I --
3. What gotta do, you gotta do. You know.
2. I heard somethin' in the -- That would straighten this thing up.
- At one time, I'm on the platf-- I'm goin' into the plat, I'm goin' into the room. There's a dark-skinned man walking towards ~~some~~ Pete.
3. Where are you now?
2. I'm up at the NURSE STR --
1. All right, now, Symore we have to do this more quietly.
2. What?
1. ~~There~~ are ten rooms on this landing?
2. Right. Right. Right.
1. When you get up on the landing, did you immediately see the man?
2. Yes.
1. Okay. At that point --
2. He was about between his room --
1. Did you pass him?
2. By two, six, two se-- Where did we pass each other?
1. Yeah.

2. By -- I would say in the middle, between five and six. Somethin' like that.

1. Fine. All right. When you sss-- when you first saw him, he was about \$ 208.

2. Yeah.

1. Where was Gary?

2. He was standin' on the outside lookin', uh, waitin' for me to come up.

1. So, when you got up on the platform, you're lookin' straight ahead. You see Gary.

2. I'm --

1. You see the man --

2. Yeah.

1. Approximately one room away from Gary.

2. Right. Right.

1. Fine. All right. Now, Gary gave you a sign to come ahead, or just was
/hks bein' there enough.

2. Just bein' here was enough to go.

1. Now, you walked past the guy --

2. Yeah.

1. (Cont'g) -- to Gary. Now what'd you say?

2. Nothin'. I didn't say nothin' to him. I just said ahh --

1. What'd he say to Gary?

2. When I entered the room --

1. Yeah.

2. I said/~~hks~~ who's this guy. He looked like the tack man to me. He was

1. (Cont'g) very dark skinned. He says "That's Cocoa." I says who?
Cocoa RIO CAMIR. ~~Lie~~ -- I didn't see in the room, but -- Lie --

1. Don't volunteer that --

2. No. Now lookX --

1. (Cont'g.) -- okay?

2. (Cont'g) -- the reason I say this to you. It was my thinkin' that when I called up, it was possible that he was in the room, - chased him out.

1. All right. Isn't that what Gary always did? He never wanted to use your driver.

2. Somethin' like that. Every time I called up the --

1. He knew who it was; right?

2. He knew who he was? Yeah.

1. Right.

Now. Did you bring money to that room?

2. To bring him the moneyX.

1. Will you be able to identify COMIER?

2. If I see him. Sure.

1. Did Gary tell you why he went into the room?

2. No. I didn't -- What'd ya mean? I presumed that was his room.

He --

1. He was there with Connie Rogers.

2. What? I guess she's stayin' close to the track. He wants to have a meeting place or a room, - whatever he's doin'.

1. Fine. Okay.

How about Ben Webster?

2. Never seen him with Gary together.

1. You saw him in the motel?

2. On the grounds in the motel, not, uh, anyplace near her room.

1. -- motel.

He advised that FOREST CALLS knew whether Ben Webster was --

2. Well, as far as the races go, when he used to say to me -- I used to ask him. I says when you get up there. Like the one time I says to him, Jesus, if this -- If this KILLWENTSWAS WITH SPAIN, he's gonna knock the whole thing out. He says to me "Don't worry about it. I got the little prick in my pocket."

1. Is that the words he used?

2. It's the words he used, but I don't use the words up there.

1. Why not? That's Gary's words. Use them.

2. He said: "I got the little prick in my pocket."

1. Turn around ~~xx~~ to the court and say: "Your Honor." Uh, when I ask you that question about INSKO, just please say: "Your Honor, the words are, you know, naughty words or pornographic words."

2. (Laughing.)

1. "What does the court want me to do?"

3. That's the way you talk anyway. What the Hell is the difference?

1. See, I -- No. Symore --

3. Right?

1. (Cont'g.) -- you're not saying nasty words.

3. That's the way it is. We talk like that.

2. Yeah.

1. Smore, the thing is --

2. He says to me. I says, you know, I says INSKO's sittin' on the favorite. If he comes in, I don't know why --

1. Do you know the racehorse show it to you?

2. He came in seventh in the race. He went off at the fair. I think
remember
it was 2:10. I still/~~remember~~ the -- He came in seventh.

3. Was it a super or a double?

2. Super race. Super. Super. Super. Super.

1. Yeah -- I'll get it for you.

2. Came in seventh or eighth. I don't know. He. He went off the pay.
I think it was two even or 2:10, somethin' like that.

3. You gonna take me back to the city?

1. Why not?

3. Oh I got some cold.

1. Yeah?

April fifth.

3. Yeah.

1. He races the super-horse. He's got a ~~xx~~ 2:10 on --

2. Sittin' on an air cushion in the race.

1. (Cont'g.) -- on April 5th.

2. Yeah.

1. Let me see this. His horse rides. The horse runs a two-oh--
I'm learnin' this stuff, Bear. I'm learnin' fast.

3. Oh, you become a handicapper now?

1. Yeah.

Huh?

3. /~~xxxx~~.

2. The spades are --

1. The race is won in 2:05 on a fast track.

3. Did he win the race?

1. He comes in seventh with a 2:061 and wins in 2:05.

3. He went in six-one --

1. Yeah.

3. (Cont'g) -- or'd they go to the half?

2. I don't know how to read it (laughing).

1. One, oh, two, three.

3. Go ahead.

All

1. /right? Ben Gunn, the horse's previous, he's won, let's see, four
find out: two, four, four, seven, two, five, two, four, two. So,

three out of the four, three out of four last times out, he was fast enough

/xxxxxx to win this race.

3. Well. I don't know what kind of horses he raced. You know, there's a lotta -- You can't just say, make a flat statement that the horse went two, seven one week, - he goes two, seven the next week. ~~xxx~~ Know what I mean? He mighta been in ~~xxx~~ tougher company; might've been outside. You know, there's other ways.

1. Yeah.

3. You gotta get around that.

1. The big horse. Let's see. All right.

The horse is forced two out.

2. Dick, can I ask you a question?

3. Yeah. What is it?
2. You read this bum was handicappin'?
3. I don't know what he was doin'. He's got me crazy.
1. I mean, to your knowledge.
3. --- I went for seven-thousand in the beginning.
1. What do you mean, Bear?
3. I put up seven-thousand and we blew it before we got the CRAF.
1. Does that mean you think he could have been handicappin'?
3. Well, I know, ^I ~~he~~ was taken for a sucker in the beginning.
1. Yeah. He took Dave for a sucker.
3. You know. Then he got me to go get it quiet. He took Dave for a sucker. In the meantime, Dave come out with the money.
1. Uh, Dave says he didn't.
3. Well, only the other day, he said he won 165,000 the reg--
1. Yeah. Dave said he give him back 150, in tickets.
3. He had to come out winnin' pretty good.
1. Dave says he lost.
3. He said he lost?
1. Yeah. Dave won gross. He said by the time Forest kept taking those tickets back, he lost.
3. Yeah, but they was throwin' sneaky punches in here and there. Costa went down. I know, like the --
1. Dave --
3. (Cont'g.) -- First night he said was January thirtieth, right?
- I know the first time we bet was like the second week in Apr-- uh,

3. (Cont'g) -- second week in January. I know there's gotta be a lot more tickets than -- I donno where they are. I know there was tickets that were bettin' at the track when we first started; that he didn't say nothin' about. I know it wasn't January thirtieth when we started, because I blew seven-thousand in/^a~~one~~ week with him up there; right?

1. Yes.

3. That's what we put up. I gotta go get a client. I didn't wait three weeks. It was -- a coupla days later.

1. --

3. We started like the second week in January.

1. His story was he did call him. He was very hesitant. You give him some numbers --

3. I didn't call him. I went to his, uh --

1. You went to his --

3. (Cont'g.) -- uh, gas place.

1. All right. Horses didn't hit. The horses~~hit~~.

3. Yeah and he bet 'em without me knowin' it.

1. He says he didn't.

3. He says he did.

1. He says he didn't, to me.

2. But didn't he testify to that fact then?

1. He says he didn't bet them. He said he read the paper the next day and they won.

3. I read in the paper where he said --

2. No. The paper says he bet the horse.

3. The paper distinctly --

2. He won.

3. (Cont'g.) -- said he bet the horse.

2. His lousy kid.

1. -- if my young associate hadn't take it home.

2. Where's the paper. He won.

1. No. That's the thirtieth.

2. He won TWENTY-TWO THOUSAND DOLLARS.

1. That's on January thirtieth.

3. Yeah. That's what we're talkin' about.

1. No. No. He says, he says, prior to that, he made the --

2. No. I'll tell you how it read. He says to Bear: "Give me some good numbers for good faith."

1. No. No.

2. That's what he said.

1. He said you called him up and said: "~~we~~'re tyin' the supers up."

You came over. He said: "I don't believe it could be done." He said the next time you're gonna try it, give me a call and give me the numbers and let me check it.

2. And the paper --

1. He got a call. You gave him the numbers. He checked the numbers and they won and the paper reads ---

3. You want to know what happened? I went over there. He gave me the money right away.

3. What money? He said he didn't have THREE THOUSAND DOLLARS to fix
give you.
3. He gave me the money --
1. That's why I say --
3. (Cont'g) -- the same day. went to the bank.
2. Am I right?
3. He took the money out and he says: "Here, go ahead." That's
exactly --
2. It wasn't --
3. (Cont'g.) -- what happened.
2. (cont.)--for the -- he says he didn't have the money.
1. That's right. That's what Kraft testified to.
3. I know. well, the story is --
got
2. He told Kraft that Junior's/~~got~~ the drivers sewed up. / ~~He c'n~~ ~~He c'n~~ do
anything he wants them to and he says "Marie's Pucey", Junior saidx
if I tell him to fall outa the sulky, he'd fall out.
1. That was on the second.
2. In the Post.
1. The third.
2. The Post.
1. When Pucey's out.
2. Yeah.
1. That's the racer.
3. January first. It's February?
1. It's February third.

2. Yeah. That was in the paper. yeah. I'm only quotin' --

1. Yeah. He said Gary had --

3. Pucey was involved in one race and, I think it was the middle, the
one we bet him. Might even/~~have~~^{been} at Roosevelt.

1. No. February third, early.

3. Was that early?

1. Johnny Ray -- That was the only time he raced.

3. Well, I'll tell you how ~~xx~~ I went to Kraft's place.

2. "If I tell Kraft to fall outa the wagon, he'd fall out."

3. I went to Kraft's place.

1. Everything.

2. Yeah.

3. I'm stuck seven ~~thay~~ thousand. Junior says: "Well, you better go get a client." Just like that. I says, don't worry, Junior. This is my business. I'm gonna get a client and I went out. I went to two, three people. Dave was the second person I approached. He come up. He give me the money. I told him the story what was supposed to have been happenin'. Give me the money. We went. Punched. He punched to Staten Island and that was part of the corporation's money which he said he punched alone.

1. He said he didn't punch the first coupla times.

3. Then. Then, we made a little score. I think it was FIFTY-EIGHT THOUSAND DOLLARS. We blew the fifty-eight-thousand in three days--

2. Hold it.

3. It was qwaze --

2. Take it sixty-six-thousand. I'm --

1. It is --

3. It was fifty-eight.

1. It is and -- discrepancy happening.

2. I'm, I'm quotin' the paper.

1. I know. You're right. I'm tellin'. I appreciate it.

3. He ~~x~~ went out of his mind. Fifty-eight-thousand, he lost.

1. He said he won~~x~~ two. He said he won twenty-two on the thirtieth and sixty-seven on December 2nd.

2. Yeah.

3. Anyway, we lost the fifty-eight-thousand. He ain't gonna put up no more money. This and that and all that nonsense, he said. I says all right, fine. No problem.

2. Then, then --

3. And I ain't givin' him three tickets and all that.

2. And then he receives a call from Junior. Says to cut the Bear out. It's better to split the pot two ways.

3. Yeah.

2. Instead of three ways.

3. And then Davey called me and told me what was happenin'. He says: "Joey, I know you won't" -- He says Jeanie called me and tole me --

2. To get rida you.

3. Yeah, that we gonna -- I says, fine. Go~~x~~ yourself. Good luck to you. I gotta few dollars now and, uh, do what you gotta do, but, uh --

2. A real cocksucker, huh?

3. Who?

2. Junior.

3. That's the way it is. That's life. I tell you. You accept people for the way they are. You got no problem.

2. I'm ashamed.

3. What the Hell's the difference.

2. I'm ashamed to talk to you.

3. At that stage, who the Hell knows what was happenin'/? I'm stuck seven-thousand. We have fifty-thousand. We blew that in three days. Does that sound like, uh, fixin'? I mean I'm in the game a long time. At that time, I think I'm gettin' screwed. I think it's /~~xxxxxx~~ nothin' but a tout scheme, at that time.

1. Did you originally -- Did you come back or did you change your mind during the course it was goin'?

3. Then, uh, we start hittin' and, naturally, when you're hitvin', you just don't give a shit.

1. But did you --

3. You know, if I give you ten, twenty-thousand and you're bringin' me money every week, I wouldn't give a shit if your toutin', playin' the stock market. You can do anything you want. I'm gonna believe whatever you tell me.

1. And what was he tellin' you?

3. Well, he was tellin' me he got this guy out, that guy out and this guy out.

1. And he's winnin'.

3. Yeah and then, in the meantime, and how many, how many times
CARMINA CARMINE
~~ARMAN~~ screwed us? Symore? Remember?

2. Yeah.

3. I don't think he's battin', uh. /~~Carmin's~~ ^{Carmine's} more out than he's in.
Never mind his cut. I don't know what the percentages/~~we'd~~ ^{we'd} have
dealt.
~~ARMAN~~

1. -- is seventeen to twenty-three.

2. ~~MAN~~ Out.

1. Right where he wants it. Now, he got it in a coupla times.

3. Carmine -- Uh, did Carmine's lawyer/^{question} ~~question~~ Kraft yet? He's gonna
destroy him.

1. No. Probably gonna -- He's a good lawyer.

3. Yeah. Well, Carmine didn't get to him yet? did he?

1. Yes, he did. His lawyer says, in effect he --

3. Well, he's a jerk, then. He didn't do his homework, because he
would have destroyed him more than Insko's lawyer. It was just
impossible they'd make a complete joke out of it.

2. Did he destroy Jim --?

1. Didn't destroy him, but what happened was a lot of tickets Dave
bet Insko moved in and out. Then he testified he was told to bet
him out. What happened is Dave was attacking LAWN and early in
the scheme, Dave was --

3. How the Hell did you know?

1. I don't think the thing became, - I don't think it became obvious
until ROSS R felt what was happening. Yonkers was --

3. Yonkers, - it was a complete zero.

1. Right. He's in the Frenchman.

3. A complete zero.

1. Right?

2. He has a Frenchman, too? A Frenchman,- the little guy that walks around with the glasses all the time?

3. No, he's talkin' about drivers.

1. The French drivers.

3. You're talkin' about the better.

1. --

All right, now. Did you ever have a conversation with Gary about Ben Webster?

2. I must have talked to him. We were always eatin' breakfast together.

3. Who was eatin' breakfast?

2. Me and Junior.

1. All right. Did you ever --

3. Without Webster or with Webster?

2. Not Webster, I mean --

1. Did you ever have a conversation with him about Webster?

2. Refresh my memory, will you please?

1. Yes -- He says -- he'll tell you what Webster was doing and, invariably, it would come out.

2. Um, well, when we would have breakfast, I would go get the forms. I would get the --

3. Over night?

2. I would get the over night. I would get the day's and I would get the Armstrong. I always get the three forms. You know, and sometimes I would look in the paper.
3. Did you ever bet any money for him?
2. Yeah. Sure.
1. Three times?
2. Sure.
3. Three times, well, primarily, you would cash it; right?
2. Yeah. betted, I/~~bet~~ uh, I remember I betted fifteen hundred for the Exacta for the total of FOUR-THOUSAND DOLLARS one night.
3. The Exacta?
2. The Exacta, but I put fifteen-hundred on.
3. What are you talkin' about Exacta?
2. Yeah, the double. It was bettin.
3. This is about supers.
2. Supers, I bet three times. I bet seven-thousand, a little more than seven-thousand.
3. Where'd you bet this?
2. At Forest Hills.
3. Yeah?
2. I did a job up in the track.
1. --
2. Yeah.
3. Did you win all three times?
2. Twice. We lost it, the night,-- Saturday night, on the chirtenth

2. (Cont'g) when --

3. You had two winners and one loser.

2. Yeah.

3. The rest, it was in cash?

1. I don't care anything about --

2. Yeah.

1. What was that con-- where did that conversation take place?

2. At the track.

1. About when? -- sufficient to give the date so instead of relying

on what ^I ~~he~~ told you, just give me the date, the facts, as you know them. We'll get the points later.

2. I was at the board and I seen Insko/^{bettin'}~~puttin'~~ the favorite.

1. Look, Symore. You've gotta realize it. The jury will not be as familiar with the facts as you are--go out of a race. Go out of a superx--

2. Yeah.

1. (Cont'g.) -- and I looked at the board and saw a guy with a 2:1 favorite and I turned around and said how come --

2. I asked -- No, I asked, Junior this: Well, we usin' Insko? He says to me: "No." He says: "Why?" I says I looked at the board, because he's the favorite. He gets in there. He's gonna knock the whole thing outa the pot. He says: "Don't worry about it. I got the little prick in my pocket."

1. Let the jury know what Forest Gary is. There's no sense makin' out that he's lilly white and we're just pickin' on him.

2. That's just what he said to me and I looked at him. I says he comes in. He knocks the whole game off. He says: "Don't worry. I got the little prick in my pocket" and then I says to him, Jesus Christ, how could you control a guy like that. He says to me: "well, if you -- if any guy/^{lost}~~like~~ as much money as he did on a land deal, a racetrack ~~/xxxxxxxxxx~~ deal in Illinois, you would need money.X That's how I got talkin' to him." Things like that.

1. Fine. Tell me. Okay, now. Turcotte came running to Gary. Did you see Turcotte in the room?

2. At one occasion, yes, but I don't know what they were doing there.

1. period. The easiest way for a witness to get into trouble is to volunteer informationx --

2. All right. All right.

1. (Cont'g.) -- and you get more extensive -- than the question. Okay?

2. Good. You asked if I ever seen him in the room? yeah.

1. Fine. Uh, you hear a conversation -- were you ever present during a conversation regarding the driver, John BARCHI, took place?

2. That was in the back stretch of the Roosevelt Raceway when --

1. Were you ever present?

2. Yes.

1. Who was with you?

2. This Scotty Rogers and Bud GAY.

1. Where'd it take place?

2. The back stretch at the Roosevelt Raceway.

1. All right. Now. They're gonna think you're standing in the

1. (Cont'g) middle of the track and some horses --

2. In the backstretch.

1. (Cont'g) -- are coming around the track for you. What is the back stretch; in the stands? Where exactly?

2. In the grand stands.

1. ~~Ex~~ By the back stretch. Okay.

2. By the back stretch. Yes.

1. You understand. It's just like as a hack, Symore, there is certain language you know.

2. Yeah.

3. Symore, where's this, Yonkers or Roosevelt?

2. Roosevelt.

3. Do you know where the back stretch is at Roosevelt?

2. Yeah. Sure.

3. There ain't even no grandstand over there, Symore.

2. Come on. When they come around the turn.

3. Well, don't say the back stretch, because the back stretch -- There's no stands in the back stretch, Symore.

1. You mean the top of the stretch?

2. The top of the stretch when I'm up.

3. When they're turnin' for home, you mean?

2. Turnin' for home. Yeah.

3. All right.

1. That's --

2. They turnin' for home. Don't say the back stretch.

1. That's the top of the stretch; right.
3. Say when they turnin' for home.
2. When they turnin' for home.
1. Fine.
2. I'm in the middle between Connie Rogers and Forest Gary, over the -- lookin' at the rail. Waitin' for the ninth race to come on, or somethin' like that, and he says I gotta --.
1. Don't --
2. No.
1. That's not meant for you. You see, they're tryin' to get out that connin' he's/~~connin'~~ Davey Kraftxx --
2. Oh. Oh.
1. (Cont'g) -- to get tickets out of him. -- the thing is this, Symore.
2. Yes.
1. I know the whole case. I've gotxx it in prospective.
2. Yeah.
1. Don't try to think of where my questions are. A lot of my questions to you are going to be in anticipation of what they've already done to Dave Kraft.
2. Yeah. That time.
1. All right; Now, how about Gene Matouchi?
2. I seen him at, uh, at the, at the --
1. Where?
2. Heh?

1. Where?
3. Was he ever involved in any -- ?
1. Symore said he was once, uh, left out and he finished out.
3. Really? I didn't even know it. I never knew that he was involved even, that guy.
1. No. We didn't charge him. Uh --
3. Well, all you're gonna do is confuse the people, then.
1. Well, here's Matouchi. He's in -- uh --
3. Nuts.
1. (Cont'g) -- he's in a 3290 shot. Next-to-the-last night.
2. Yeah, but I -- I seen Matouchi at the Raceway Motel.
1. Yeah.
2. Not in the room. One day in April.
1. Well, he said he left him out. Did he ever indicate to you that he left him out, because Matouchi was out, because he paid him or --
2. No. He never told me. He never told me he paid these guys. because, uh --
1. Well, you had a clear indication certain drivers were out, ~~why~~ because, uh --
You knew Insko was out for a reason?
2. Yeah, but he never told me he's payin' him.
1. Symore, if a guy says to you -- you'd have to --
2. Yeah, but you gotta understand one thing.
1. All right. Lemme --
2. Would you want me to say that --
1. Wait. Wait. Lemme put it --

1. (Cont'g) -- to you logically.
2. He was cute and I was --
1. Well, listen. Let me put it to you logically.
2. Yeah.
1. Tell me if this makes sense; right?
2. Yeah.
1. You see too. Can I be sure this guy's gonna be out on the favorite.
All right. A driver to make money has to win; right?
2. Why, sure.
1. He gets a percentage of the purse; right?
2. He gets paid either way. He gets \$ TWENTY-FIVE DOLLARS for a ride.
3. He's a smart fellow.
2. Don't they get TWENTY-FIVE DOLLARS if they lose?
3. They train a horse; right?
2. Yeah.
3. They get five percent --
2. How about catch driving?
3. Catch driving, they get five percent of the --
2. Oh.
3. (Cont'g.) -- five percent of whatever it is.
1. Okay. Forget it. TWENTY-FIVE DOLLARS. The driver gets paid when
he wins; right?
2. Yeah.
1. He gets a percentage off his purse; right?
2. Yeah; that's true.

1. How, here's a guy on the favorite and Gary's telling you he's not going to make it.

2. Yeah.

1. And the reason he's not going to make it is because he's had bad financial trouble.

2. Hum.

1. Now what does that say?

2. That he's fading off; that's all.

1. All right.

2. I mean, uh --

1. Uh, Seymore, if you didn't ^{draw} ~~try~~ that conclusion, you would be an idiot.

2. Well, I drew, that's in my mind that --

1. He said it to you.

2. He said it to the guy.

1. He said it to you. I mean. Can you say it any more likely and start payin' a guy.

3. Yeah, but still he never said he was payin' anybody.

1. No, but fine.

2. Excuse me. ^{I asked} ~~Ask me~~ a question.

1. Would you --

2. That's it. You say answer the question and we'll give 'em the right answer. That's all. It's easier that way. The courts are always --

3. Ask me the question.

1. Now --

2. Then just ask the question.

1. Did you ever in that con--, conversation or with anyone else ^{hear} ~~where~~ Cary indicate to you that a driver could make more money on being out than by being in?

2. Now you confused him.

1. (Laughing)

How

2. /Now you gonna answer the guy?

1. (Laughing)

3. He was.

2. He was what, Symore? Heh? He never volunteered any information more than he had to; right?

3. That's right.

2. But sometimes he let something slip out.

3. Well, see rarely --

2. Yeah.

3. -- did they --

1. All right. Now, Symore, what's the most tickets you cashed?

2. Oh, now, now I have nightmares of this. He once handed me Sixty--

1. That wasn't the question.

3. See, there was at one time a total of -- He told me he has over a hundred tickets on the super; that it was under the 900. I was given at one time tickets totalling TWENTY-ONE THOUSAND DOLLARS, totalling FIFTEEN THOUSAND DOLLARS and Connie Rogers had a total of FIFTY-SIX THOUSAND DOLLARS worth of tickets and they she got beat up the next night. She blamed me for tellin' them or somethin'

3. (Cont'g.) -- the fucken -- Remember the time she came in with busted eyes?
2. Uh --
3. You remember she wore glasses.
2. Whatever you say, Symore.
3. He busted her up.
1. Hey, did you cash any tickets on this day? Did you use Murray KON to cash?
3. Who's Murray KON? No, I don't know him at all.
1. Levine, Al Levine?
3. I don't know him.
1. Weinstein?
3. I don't know Weinstein.
1. Rosenthal?
3. I don't know Rosenthal.
1. Cohen? This is a -- had seven tickets, uh, nine tickets that night and, you know, he doesn't remember any of those cats --
2. ^{he} well/~~I~~ asked --
1. Uh --
2. Wait. wait. wait. wait. wait. When/~~Junior~~ ^{Junior} asked me, when Junior gave me these sixteen tickets, I says are there more and he ~~sy~~ says: "yeah. Bear's got ~~a~~ some." Now this is his words.
1. Okay. Now what I'm tellin' you --
2. It was in the car.
3. It was wait 'til midnight just to prove --

1. All I'm sayin' to you --
2. I don't know this.
1. All right. Fine.
2. I don't know this bastard.
1. All right. You said Junior told you Bear had 'em.
2. Yeah. He says: "I gave some --"
1. I want you to know that they show you that chart and say Bear didn't have any. You simply say: "I only know what Junior told me."
2. That's right. I asked Junior in the car are there any more of these tickets. He says: "Bear has nine or ten," somethin' like that.
1. Did you ever see Gary Spiegel, a driver at the racetrack?
3. Tell the truth.
2. One, one driver: Teddy McNUTT.
1. Where?
2. At the, the -- at the grandstands by the far turn.
1. Describe McNutt.
2. He's standin' over six foot.
1. What was his hair?
2. Gray with long -- Grey hair. Nice though.
1. Say prematurely gray; will you?
2. Prematurely gray. What were you sayin'?
2. I don't know no ELLIS.
3. Thirty or twenty feet from him.
1. All right.
2. Did I recognize McNutt? Yeah.

3. You know Kenny?

1. Now, you said --

2. -- know Kenny.

1. Now, you said he's considered to be --

2. Huh?

1. You tell us McNutt is considered to be Gerry's man. What do you base that on, or did you ~~say~~ say it at all?

2. --

1. Here's what you say -- a Driver in Vonkers Raceway definitely Gerry's man. You also stated along --

2. Who? Who?

1. Ken McNutt talkin' to Forest Gerry at the grandstand at Roosevelt and LEVARCA, he's also considered to be Gerry's man.

2X. What probably ^{happened} ~~happened~~ that night when McNutt left, I walked over to Gerry. I says --

3. You know his owner; don't you?

2. Yeah, Harry OBEDIEN.

3. Did you go to his owner once before?

1. What do you mean?

3X. You said you were going to go to him?

2X. Did I go to his owner?

3. Yeah.

2. Now. I didn't go to his owner.

1. Okay, now. -- are you sayin-- well, oh Gerry working for him. Did you have a conversation with Gerry regarding that?

2. He told me his brother-in-law works for him, too.
1. That's all. He didn't ^{see} /~~say~~ any effect to it?
2. No.
3. -- to hurt him.
2. Huh?
3. He'll do anything to hurt him.
2. Who will?
3. His brother-in-law.
2. His brother-in-law. He hates Gerry with a passion.
1. Who's that, Mangram?
2. Yeah.
1. Cene Mangram?
2. /~~xxx~~ well, wait a minute. I'll give you words what he says. "I hope they never get to my brother-in-law. He works for Insko." That's the truth, as it came to me like I asked you.
- 1x. The problem is this. His brother-in-law likes Insko and if his brother-in-law's gonna sing for us, ~~xx~~ he's gotta sing --
2. Oh, well.
1. He's gotta sing Dell with him.
2. well, I see him. He says: "I hope they never get to my brother-in-law." I says who is your brother-in-law? He says he works for Insko.
3. I thought he ~~hated him~~ hated him with a passion.
2. That's what he said.
3. I, I met him in the house a coupla times and, like, they, they hate

3. (Cont'g) one another.

1. Yeah, but see if --

3. And if anythin' was goin' on, I know that he wouldn't know about it.

1. Well, he might know if it -- with Insko; if Insko was involved, but he had to testify against Dell.

2. Well, what the Hell would they need him for?

1. Right.

2. They don't need him.

1. You're right.

2. The only guy/^{that}~~they~~ start trouble one night was Bonnacorse. Says to ~~DONNELL~~ ^{DEL} something to the effect that, uh, Cerry's up there punching and this guy GAMBLIN with him up there. "I know what's goin' on. Why don't you give me the numbers" or something and Dell grabbed him and he wanted to bring him right to the stewards.

1. Why?

2. Because he made a statement like that. He said: "You're ~~sure~~ full a shit, Bonnacorse. Come on. Let's go to the stewards." There ^{Be to do} was a bet due at the track. I have to be here about that.

1. Think Dell was callin' him on it?
3. Sure. He wanted to go right to the steward. That was the kind of individual Dell was.
2. Yeah, but, you know, ^{he's} ~~next~~ got a reputation of bein' the most honest man at the racetrack. He didn't get that from, you know --
1. --
3. Christ! What do you mean by that? -- lotta punk mouth.
1. His reputation was so good,-- people find it difficult to believe.
3. Yeah. No, he's, he's like a un-approachable. He's like seein' you know -- Well, today, I mean, Christ! You know, you got the Pre-- President can corrupt, so what the Hell's the difference; Mitchell and them.
1. -- Thank God.
2. What was they? Found guilty?
3. No. Well, you know they're outa office and all.
1. -- find 'em guil-- big shit.
3. That's the way it is. That's life.
2. No. He says they went --
1. All right. Now, who else did you see with Gary at the GAMWAH?
2. Oh, the GAMWAH. You can see him with almost everybody. A--after the races, anybody would go into that bar and sit around by the bar and eat. They all have tables and he come in there and eat with Connie and FRANK GRECO.
3. Who's, uh, the drivers are?

2. Wait a minute.

1. All right, now. Here's an important point.

2. He just walked over and said "Hello". He never sat with the drivers.

3. What drivers?

2. Well, there was Insko in there. There was Popfinger. There was Willie Popfinger.

3. Willie Pop?

2. Yeah. There was Frank Popfinger at the table, too.

3. Frank Pops?

2. Listen, Lou. Perry never used to eat. He used to sit there --

3. Phil did.

2. Maybe Perry.

1. What's his racket?

3. I don't know the guy at all, just --

2. Driver.

1. Oh.

3. He's just a small monkey driver.

s2. He's a monkey driver. He's always in GAMWAH's.

1. What's a "monkey driver"?

3. Just, uh, he looks like a jockey, PART, ^{jockey}~~jockey~~, small guy.

2. A little fellow.

3. Frail.

2. He was here when Alec KANTER was here.

1. Right. ELEANOR's --

3. How come Kanter right? He testified to a thousand dollars, right,

- gave
3. (Cont'g) he/gave? And then he says he only gave him EIGHT HUNDRED.
2. Yeah. Then the oth-- Then that TRAINER ga--
1. No. Kanter said the deal was a thousand, or he could get Kanter for a thousand, but he only got eight hundred.
3. But he got eight hundred, because he owed him the money.
1. No. Kanter didn't say that.
2. That's what the paper said.
3. Junior ~~wa~~ owes him --
1. Junior owed him money, but Kanter didn't say this was money he was gettin'. Junior's owed him the money for eight years. That's what Junior is tryin' to ~~xx~~ see.
3. Oh, he's owed him the money for eight years.
1. Yeah.
3. That's right.
1. But Junior -- Kanter says I got some money for finishing out.
3. But didn't he win the race?
1. No. They came ⁱⁿ ~~xx~~ last, - dead last.
3. He testified to this? I thought he testified to the eight hundred.
2. No.
1. He testified he got eight hundred.
2. Eight hundred doll-- I tell you what. He's testified that after the race was over, he -- the next day he met Junior at the, at the, at the diner, dina--Junior gave him eight hundred instead of a thousand. The following week, uh, TRAINER approached him. He says, uh,:
- "Don't, uh, use the horse up in a hurry. Make sure he doesn't come

2. (Cont'g) in the first four. I'll give -- and, uh, we split a thousand dollars. If I get five and you get five." So, he got five hundred
TPAINER
and / XXXXXX wasn't able to get to the pee under the --

1. Problem?

3. Problem?

2. Yeah. So he got five hundred for that job and eight hundred and Junior still owes him two hundred for that job.

3. No --just like he said it was fifty thousand --

2. Am I right?

3. (Cont'g) -- and he only got eight hundred. It looked stupid in the paper.

1. He gypped him outa two.

3. Oh, he gypped him outa two? -- How come Kanter didn't say he got a thousand? What the Hell's the sense of sayin' he got eight hundred?

1. I donno. Kanter said he only give him the eight hundred. Let me ask you this, Symore. Did you have a conversation with Connie regarding a ^{Connie} ~~Connie~~ and a RICHIE?

2. Did I have a conversation? Yeah.

1. All right, now. Here's what it says. All stating, colon. On one occasion, Connie telling him that GROSSTEIN, if any problems develop in the Superfectas, they should handle it, because they were doin' business with a guy named Richie, whose father is in COLOMBIA?

2. I said that? Aw, come on. I never said that. That -- No, no. There's somebody's puttin' words in that fuckin' thing without me. No, sir.

1. Well, you know, I'll tell you why it's so --

2. I never knew Ritchie. I never met Ritchie.

1. Now, wait a second. I'll tell you why it's --

2. There's two people I never met.

1. Will you please hold on a second. I didn't say --

2. Uh --

1. (Cont'g) -- you met 'em. I said Connie told you this. This situation, this interview took place on July 12th. The Richie is on trial. The fact in it is true. We never identified this man until Separment. They could not have put this in your mouth. They didn't know it at the time.

2. --

1. There are some things, I'll admit, they can put in your mouth.

3. I think they knew about Rich in there.

1. No, they didn't. The first time they ~~xxx~~ heard about it was Bruce CONSOL, unless you -- Did you tell 'em?

3. Sure they knew about Richie.

1. You didn't know who he was at first. Connie ever tell you they gotta guy in Brooklyn that can take care of any problems which manifest --

2. No.

1. Are you sure, Symore?

2. Hey! There's one guy I never heard of until I was -- I read, uh, This, until we were all indicted. ~~xxx~~ uh, Pete, uh --

1. Yes.

3. That figures. You picked the right two, uh. -- I don't blame you, Symore, because I, you know, I agree with ya. I know the position you're in, but you're right.

2. Ain't no way, no one was I know --
3. Right.
2. (Cont'g) -- guys.
3. You're a hundred percent right. I don't blame --
1. -- you know them, Symore.
3. (Cont'g.) -- ya.
2. If he comes out and asks me, I don't want to say I know 'em. I don't know.
3. --
2. I don't know and then make 'em mad.
1. Symore, if -- You probably don't know 'em, but did Connie ever say that to you?
2. I don't remember. Probably she did.
1. Well, then --
2. I -- I don't know.
1. -- expect.
2. Maybe she did. She said -- if it's there, she musta said it to ~~HEEN~~ ~~SAID IT~~ me.
3. Well, that's what I'm sayin' to you. This is the girlfriend I believe they could have made up, because if they learned about it, they learned about it right about the same time. They didn't know that much before this. -- well, I donno. They says --
2. Didn't they ask you that?
1. Well, I want to ask you that. I want you to --
2. I don't remember, uh. I don't remember. You know, it's ha-- hard
- This is over a year ago. They might have other problems at my

2. ~~Tim~~ (Cont'g) time.

3. Yeah. You get him to say that and~~x~~ then I got, uh, you know, inter-
rogatories or somethin' / ~~that~~ ^{they} state that prior to that time that I
mentioned it, then your statement is wrong.

1. Well, I don't want to say that --

3. No value.

1. (Cont'g.) -- it's now. Uh, I want to know if it's true. There's only
one inaccuracy in that. The, - Perry's father is not in the Mafia.
It's his partner's father who's in the Mafia.

3. Well, I don't know these things.

I'm not saying you do. if

1. / ~~XXXXXXXXXXXXXXXXXXXX~~ I'm askin' / Connie ~~said~~ it to you.
What kinda business are they in?

3. I don't know / ~~what kinda business they in~~

1. Who?

3. His partner. What kind of business are they in?

1. Perry is a gambler, straight out.

3. Yeah.

by the name of

1. Right. He's got a guy / ~~named~~ Peter Vario as a partner in this scheme.

Now, Peter Vario is a SHTUNK from the word ~~go~~.

~~XXXXXXXXXXXXXXXXXXXX~~

2. Yeah.

~~XXXXXXXXXX~~

1. He's a nothing. He's a zero, but his father ~~is~~ is Paul Vario. The--
, Gold Bug out in Canarsie?

2. Yeah.

1. He's a big man. Now he had nothin' to do with this operation or
anything else.

Right

2. ~~Right~~

1. The father trusts Richie perry more than he trusts his own kid and he keeps comin' with the kid to KEY PERFECTO. Richie perry is not the kind -- He's not a big guy. He's not a made guy. peter Vario is not a made guy. Pauley Vario is in jail. He's doin' -- I think he's got fifteen years facing him --

2. Who, his father?

1. (Cont'g.) -- and he's fifty years old. He's out of sight. paul Vario's family's been tremendously decimated, -- shamed in the underworld, because of the Gold Bug, - because of all the convictions. He is just --

2. yeah.

1. (Cont'g.) -- totally without any power.

2. yeah. --

1. You see, there's nothing to fear from these people; honestly. Peter Vario couldn't hurt you on a bet.

2. Right.

1. Richie perry, - he's such a clown, the minute the thing ended, he traded in his Seventy Buick and bought a Rolls-Royce, - cash.

2. -- ??

1. yeah. Not anyone lost in this deal. Richie perry made good money. You see the thing is this. They're tryin' to show us a tout scheme.

2. --

1. No one, in their right mind, is going to tout the Mafia; right?

2. Right.

1. Isn't that a fair statement?

3. yeah, but does Junior know this other fella?

1. Who?

3. Peter Vario. I never seen the guy in the racetrack or anywhere.

1. Well, he knows Richie. We caught him with Richie.

3. Yeah, but you can't say Junior knows the other guy. If he's doin' somethin' with Richie, how the Hell can you say he's doin' somethin' with the other guy?

1. I'm not, but I want to know did Connie say to you -- This is in July, anythin' now. The heat's gettin' on. Did Connie every say/~~any~~ to you at any time, that we can take care of any --

2. Well, I tell you, Mike. I was up -- /~~any~~ ^{Gee,} she was a fuckin' weird pain in the ass. She used to make me come up to the house after this thing broke. She called me four -- I used to get up with the ~~STRUNK~~ OF FOOD all ready. Connie, leave me alone.

1. All right. Fine.

2. "Come up to the house."

1. All right, Symore --

2. She, uh, really did.

1. (Cont'g.) -- did she say that we could handle any problems as, you know --

2. Wait. Wait a minute. Wait. We're goin' back to somethin'. Wait a minute. We're goin' back to somethin'. I came up there fuckin' angry. It's July; right?

1. Right.

2. I came up angry. -- house. Somethin' and I came up there. I said, why, Connie, what's gonna happen with the tax state and I remember

2. (Cont'g.) -- seein' three bags of tickets and I says where you takin' 'em to. Connie, where you takin' 'em? I says what about me with the tax people? I gotta make up my taxes. How'm I gonna be covered? She says: "Don't worry. It'll go to Junior see that you'll get covered." I said yeah, by who? /~~Who's~~ ^{Who'm} I gonna believe? So, she says to me: "Don't worry. We got somebody by the name of Richie, who'll take care of a lotta things for us."

1. Did she say why, or how he could take care of things --

2. No.

1. (Cont'g.) -- or just a statement.

2. No, just, uh, take care of a lotta things for us.

1. Did she say where Richie was from?

2. No. No. No. No. I remember now, 'cause I wanted, I wanted tickets to cover me. Do you follow me, and she was movin' these tickets out. She says: "I gotta -- We gotta guy named Richie to take care of, care-a take/~~care-a~~ things for us."

1. Fine.

2. Um.

1. Very good. Now, here's a statement as attributed to you. -- " -- period, fine. I didn't make it. I missed the plane. Honest to God, Browning's gonna kill me when I told him. -- I got there two minutes after seven. They already left and they said Browning was on the plane. I got a call from NELL. I want you to know I made it from -- -- the drivers in this park. COLVERT indicated to WILSON that Gerry had it with Insko, McNutt, Cormier and Turcotte.

1. (Cont'g.) Now, does that ring a bell between the two of you?
3. Cormier, - just impossible. I never met Cormier in my life.
1. Okay.
3. One time in the dining area. Shook his hand warmly. I gave him a number and he could never reach the guy. As far as I know, he never ever did anything with Cormier. That's why I don't even know what the man has even been here.
1. Okay.
2. What were the other names?
1. Insko --
3. McNutt, Insko.
1. (Cont'g.) -- and Turcotte.
2. Turcotte. Well, Turcotte, I never knew.
3. McNutt. ☒ I have seen him once with a car, you know -- harness. I was in the -- with Ken, once or twice.
1. Right.
3. Uh, Insko was in the restaurant. I met him a few times, never in a car.
1. Look! Unfortunately what happens with all, these statements will be turned into a memorandum, so -- Now --
2. No. I mean, I know, myself, that BLEENG AIR was served, but out of context and they really are 'nd -- but they just stayin' -- but no matter. That's what you're here for, you know, put everything together and tell the same story.
3. See, I seen all the stories --

1. You're very weak on the races. You don't really remember what happened in the races.
2. Yeah.
1. I want to stay away from that with you.
2. All right.
1. Uh, I don't wanta, I don't want to open you up to abuse. Now, a lotta what you say about the races is wrong; not the information~~m~~, but dates are wrong, horses are wrong.
2. I could be wrong on dates.
1. If you can get it wrong -- If you get called out on cross-examination, don't -- ~~xxxxxx~~ Be --
2. I see.
1. (Cont'g.) -- put up to admit to say it.
2. What do you mean? They're gonna say it?
know who again
1. You didn't bet. The guys'd/~~xxxxxxx~~ were the betters.
3. I only touched three races.
2. I only bet three times. That's all.
1. What happened, Symore? The best we could ascertain is you look at the programs a little --
2. Yeah.
1. I understand that you do it and I understand what your effort to do it. What I'm saying to you is this -- I found very little about~~xx-~~ HALPERN, - why he was betting. I asked him once about Insko. I saw him meet with McNutt. I saw him meet with Turcotte and he took a ticket from there. I didn't see the ticket -- Turcotte, but he was

1. (Cont'g.) -- there with R Turcotte. I saw Turcotte in a room with Joe Bonnacorso, where he delivered money.
2. Yeah.
1. I saw REO Cormier, one door away from that room, where he was delivering money. Those things you can say. Okay?
2. Yeah.
1. If you stick to those and admit on the races that you're not exactly sure, because I wasn't punching -- I tried to reconstruct, but I -- I don't -- I'm not sure now accurate I am; you can't get hurt.

THAT IS THE END OF SIDE TWO OF DEFENDANTS' EXHIBIT MMM.

THAT IS THE END OF THE TRANSCRIPTION FOR ALL THE TAPES.

REEL # 5

CONTINUATION MMM

AND START OF SECOND SIDE OF MMM

(JOE)

2 That's right.

1. They turn around and right away --

2 -- testimony really -- pertaining to the case.

1. They certainly can.

2 Why?

1. Testimony, usually -- There's two types of immunity.

2 Usury and testimony.

1. Transaction and use. Testimony and use. Testimony and use is the second. Testimony --

2 Fine. Give me testimonial. I'll worry about that.

1. Your credibility is greater if it doesn't look important in testimony. That's our thought.

2 --

1. All right. I want to go over your testimony today. I want to see you'll exactly what you've got. What/~~you're~~ testify to, because I've got thing to tell it to BARTONZACK. Any questions? The only/~~think~~ -- obstacle. I got no argument givin' it to you.

2 Ain't you the boss? This is your case?

1. Yeah, but he -- He is the one who has the case from the beginning right, and, in most cases, you're/~~really~~ but because of his proximity to the case earlier, he's taken the position -- Now, I tried to talk it out of 'im Friday. I'll try to talk it out of him now, -tomorrow and then I will, uh, we'll go over it; all right, but --

2 Uhhh, let's go over it when you get the testimony f--

1. I don't have time, Joe. Come on! Don't break my balls.

- balls.
2. I don't want to break your ~~balls~~ I don't want ~~to~~ come near --
 1. Let's get it done.
 2. (Cont'g.) -- nothin' like that.
 1. Let's get it done and then we'll go forward and we'll put you on the stand. If you're not totally satisfied, we'll postpone it; okay?
 2. And if I go through this and that --
 3. You sound like you've had it.
 1. You're here already?
 3. Well, this doesn't mean nothin'. Tha-- That's only the side 'vents. I've been here all week. That's not gonna help.
 1. Fourteen years.
 3. I ain't worried 'bout that, but, uh, theyx tell me one thing. You're closer to the judge and alla that.
 1. That's true, but in a Federal court, you cannot guaranty, 'cause a judge can turn around. Now this judge has never turned around. When I walk into court at the time of your sentencing, I will say to that judge I have never had a man testify so honestly. This man -- There's no purpose served in this/~~man~~ goin' to jail.
 3. I don't want that shit. I want, you know -- Don't give me that non-Make it clear, if sense in front of the judge and jury and all that./~~that's what you want~~ you and him make it amongst yourself, if you're that close to the guy. I don' wanna --
 1. This judge does not do that. He will not take orders.
 3. You talk to him. I--If you're as close to him as they say you are, then you can make a deal beforehand. If you can't, then you --

1. No, I can't.

3. (Cont'g) ~~you're~~ ^{aren't} close to the judge.

1. I can't make any deal you want.

3. --'vance and then what? It ain't, uh, beneficial.

1. What have you lost? I can't hold you to what you say in my office.
I can hold you to what you said to the Grand Jury.

2. yeah.

1. I can put you on the stand as to that.

2. yeah. Fine.

3. All right.

1. In this circuit, the law is if you're available, I can put you on the stand and if you deny what you say, I can read your Grand Jury testimony as affirmative evidence, ~~which~~ ^{he} evidence a jury can reserve, and ~~he~~ ^{he} can cross-examine you.

3. -- questionin' me, the Grand Jury skip from page to page. They got pages missin'. It wasn't too good an impression there.

1. You're right.

3. That much I know.

1. I know, but I still have you on the stand.

2. Oh, yeah.

1. Wait a minute. What's --

2. There's no problem there.

1. Joe, I only thought I'd start workin' --

2. ^I only thought I'd start workin'. There's no problem there.

1. All right. I don't want to work it that way, Joe. Wha-- I represent. This is the first time testimony ^{IMMUNITY} you're even mentioned to me. Now, I tell you I'll go over it tomorrow and I'll recommend it to ^{DILLER IT} ~~THE~~ GRANT ^{ED} I'll ask -- my problems. All right?
3. They tole me meth--
1. That's not true.
3. ^{DONT ME NOTHING} (Cont'g.) -- 'in.
1. That's not true.
3. That's -- my answer.
1. This, This court will not allow plea bargaining.
3. What's "This Court"? you're talkin' 'bout?
1. This is Federal court.
2. The judge?
1. No, the whole court.
3. Which --
1. The eleven judges.
2. (Cont'g.) -- I don' even know what that means.
1. That's when the attorney for the Government and the witness, or defend-
ant, agree what you'll get. They settle it. They demand the right to it's
sentence as they see fit. Now, in many cases, in most cases, ~~xxxx~~ a
It's a
fiction. ~~xxxx~~ fiction which they live with, because what the judge
will say at the time of sentencing, if you've been promised anything,
only that "my cooperation will be made known to the court". The judge
will acknowledge that as not being a promise and realize that that
promise is made in this court everyday, is a promise that if the ~~the~~

1. (Cont'g.) -- witness testifies to the plea, he will be given a suspended sentence and it happens everyday of the week in this court and I've had it happen forty times in the last year -- You don't know the judge.
2. Why do I --
 1. You don't know the judge.
 3. In other words --
 1. You don't know the judge. You don't know this man. This man does not handle --
 3. I donno.
 1. He's even-tempered like --
 3. You've been talkin' to him. I donno.
 1. (Cont'g.) -- me.
 3. I don't know.
 1. He's even-tempered like this. He doesn't go up or down. He has no hatred. He's a man who doesn't sentence bankrobbers to long sentences, for God's sakes.
 3. Well, if -- he, you don't sentence bankrobbers, he sentenced ^{KENNY}~~TOMMY~~ ₁₋ ~~THE~~ ROGERS to two years. Why? Because he wanted --
 1. Because he wanted ~~him~~ her --
 3. (Cont'g.) -- a million dollars?
 1. " -- to testify. Absolutely.
 3. You told him to sentence Connie Rogers for two years. Anyway, the jail -- anyway, get a stiff sentence you can break it down. Oh, then you talked to the judge prior to the occasion? You had a conversation after the course of the day?

1. Absolutely.

3. So then you are close to the judge?

1. I told you, *Am I*

3. Yeah, but you never told me that way. Like you referred to him -- See. You tried to put the screws to Connie to testify. Then you made him give her a stiff sentence since, so she would testify, which she didn't, so you're close to the judge. You can make deals with him. You just made a deal, you told me, with him.

1. Yeah, but you're look -- For -- Joe, it's a fiction. The guaranty--

3. No. I want your word.

1. You got my word.

3. I want to know what you can do --

1. You've got my word.

3. (Cont'g.) -- with the judge.

1. You got my word.

3. You made the deal with her.

1. Yeah.

3. You made her get two years. So, at that time, you could be -- You're close enough to this guy to control him, to that extent.

1. Right.

3. So, you're close enough to control him --

1. He respects only --

3. Tell me, THE WALL?

1. Let's put it this way. He respects --

3. He couldn't *WORK* your word. That might --

1. No.

3. He wouldn't give me his word.

1. No.

3. I want this straight out. I want it -- You know.

1. Well, he's gonna ask you --

3. When?

1. At the time, at the time you take your plea, whether or not you were promised anything.

3. Well, forget about it. I ain't promised nothin'. What I say to you, you say to me. That's it.

1. Right.

3. What ^{FANNING} FRAILEYS to me or the other guy, that's it. You, you were close enough to the judge, at that time, to get Connie two years.

1. Right.

3. But you told him to gi-- to give her a harsh sentence and he did give her a harsh sentence.

1. And he -- er, tried to give Joe Bonnacoree a harsh sentence, and he was going to give Junior and Turcotte harsh sentences.

3. Which you told him to do, prior to that --

1. Right.

3. (Cont'g.) -- and I suppose GROSS --

1. That's right.

3. (Cont'g.) -- but you just called him to make a deal for me, and then I -- ^{So, then,} ~~obviously~~ you never, never did that.

1. That's partly, to some extent.

3. Oh, now. Wait a minute. I'm on my side, not on your's.

1. ~~No, he's not --~~
 1. /-- he's not in my hip pocket, Joe.
 was it, uh,

2. / ~~well, then he's~~ pretty well what he-- what you say he does.

1. He'll agree.

3. He jumps to the whip, a little?

1. I'd say forty out of forty times.

3. Yeah. In other words, you control him,- that judge.
 yes.

1. In this degree, as far as witnesses go. /~~yeah~~ Yes.

3. In other words, what you say, he does?

1. No. /~~if~~ If I told him to give a guy twenty years, he wouldn't do that.

3. I mean, you know, without one,- gettin' him destroyed; you know,
 makin' a fool outa him, but you, you know, you can control it.

All right. Then we'll try to get the transaction. ~~we'll see~~ ~~see~~ what happens.

~~all right~~

All right.

1. Joe, tell me the background of ~~yourself.~~ ~~yourself.~~

3. Is that the first question?

1. No. It's not a question. I want to know you now. I want to know
 where
 your background: /~~where~~ you come from.

3. Poor family. I went to grammar school, to high school and why I
 jumped outa the window/~~at~~ ^{out} another school.

* * *

2. He says: Where do I live? What floor?"
3. So what'd-ya say to him?
2. I says, well, I followed her --
3. Followed who?
2. Uh, FRENCH. I says what're you, a fuckin' dog? You follow?
3. You donno where he went?
2. He donno; he donno where I live. He thought I was gonna have a bad memory. You know what I mean?
3. But you remember somethin'.
2. -- tell the truth, I remember a lotta things. I tell ya, Joe, I went way past -- I guess that's -- that's all. What the fuck do I know, 'cause he owed me money.
3. He owed ya money?
2. Yes, he owes me money. I'm gonna let them know that this kike says he's a fuckin' bum.
3. He's a real --
2. -- this other guy. I had a ten-percent deal with him. I was gonna get and keep, uh, whatever I had. If I had fifteen-thousand ^{he'd} ~~xxxxx~~ go and ~~and~~, uh, give me Fifteen-Thousand, plus Fifteen-Thousand and a lawyer. That was the deal I made with him. He'd tell nobody. A lawyer and if I'd go away in jail, the deal was 250 a week, to my family. ^{tickets,} All right? I went to Connie and asked for the fuckin' ~~xxxxx~~ she, she moved them out. Remember, I told you about that. Moved out three bags of tickets.
3. yeah.

2. Heh?
3. I don't remember. I mean, there's so much that went on in this case. I tell you I wish I could go away and go to sleep for about a month.
2. I think you oughta --
3. -- go on a fuckin' cruise.
2. My fuckin' brother-in-law says I gave him 146,000. A real --
3. Why'd JIM lie and tell it to her?
2. No. He gave gave a fuckin' ~~give~~ me ~~money~~ 146,000. what does he say?
3. Oh, you're onto him for life.
2. Yeah? What the fuck do you think -- (Laughing) -- what the fuck started that. You know where that started from. ^{What're ya} ~~What'd~~ bring-in' me into it.
3. How many lies can he tell?
2. He told two lies.
3. What'd he say?
2. That I gave him -- that he only got 26,000 when he got 7,000 --
3. And what else.
2. (Cont'g.) -- and that I gave -- that he seen me givin' money at the racetrack, which I never did.
3. That's two lies he told.
2. Yeah. I never brought money at the racetrack.
3. I think everybody in that class said a hundred lies. Everybody went up with their wives.
2. I, I never gave money at the racetrack; only once was the first time I cashed ~~any~~ any, but after I was goin' to work, I always brought the

APPENDIX E - TRIAL REFERENCES DEPICTING APPELLANT PER: AS
A MEMBER OF MOB, SON OF A MADE MAN, AND A BOOKMAKER 4696

1 MR. BRACKLEY: I think Mr. Hochheiser should
2 properly be here for that.

3 THE COURT: We are going to have Mr. Kraft's
4 redirect first. I will hear you then.

5 MR. POLLACK: Are we finished with cross?

6 THE COURT: I thought we were.

7 MR. MC DANIELS: Mr. Sterenfeld was still on.

8 MR. POLLACK: I thought we were --

9 THE COURT: I said twenty to ten this morning
10 to get reports and film and you didn't give me any
11 material on what portion of the tapes you thought
12 were essential. I read the transcript over the
13 weekend and it seems to me there was a minimal part
14 that related to the testimony.

15 MR. POLLACK: I haven't finished with it. I
16 was doing that when the Court called.

17 THE COURT: If you are going to redirect
18 Mr. Kraft on it this morning you must have finished
19 it.

20 MR. POLLACK: Well, sometimes you have to do
21 first things first.

22 THE COURT: I see.

23 MR. POLLACK: One other point. Something
24 brought to light on Mr. McDaniels' cross-examination,
25 as to how the witness knew this was not a tout
scheme which was, I believe, was the thrust of the

1 cross-examination most effectively used by
2 Mr. McDaniel. In anticipation I spoke to several
3 witnesses including Mr. Kraft, and one of the things
4 we come up with is highly unusual and I suspect
5 highly prejudicial and yet highly probative. All the
6 people were told that Mr. Gerry was furnished
7 information by a man by the name of Richie who was
8 related to someone in the mob.

9 And now, in relation to this, the theory --
10 the concept of the theory of the man on the street,
11 you don't tout with individuals who react with
12 friends in the mob.

13 We are prepared to show that through
14 Mr. Cussell, Mr. Perry maintained a key to the
15 apartment of Paul Vario and Peter Vario is the son of
16 Paul Vario and I can produce from the McClellan
17 Committee some evidence that Paul Vario is a
18 lieutenant in the old Luchese family of the Italian
19 underworld.

20 This is something I steered away from in the
21 direct examination of Mr. Kraft. I don't know how to
22 handle that area unless I am allowed to bring out the
23 full evidence from --

24 MR. BRACKLEY: The other attorneys ought to
25 hear this.

8 Kraft-redirect

THE COURT: Your best recollection.

THE WITNESS: To my best recollection, approximately 50 to 60 horses.

BY MR. POLLACK:

Q Sir, how much money have these horses won?

A One horse, I can safely say, earned over \$50,000. The rest of them, I can't put a number on it.

I don't have a way of computing that at this moment, sir.

Q Have you been around harness tracks during the time your horses were racing?

A Yes, sir.

Q Do you consider yourself knowledgeable in the industry?

A I think so.

Q During the course of your dealings with Mr. Gerry, did you at any time think you were involved in a tout scheme?

A No, sir. If I thought --

MR. ROSEMAN: Not "if;" answer the question.

THE WITNESS: Definitely not.

MR. POLLACK: I want to ask for a side bar on something I brought up earlier.

THE COURT: All right.

9

Kraft-redirect

(The following took place at the side bar:)

MR. POLLACK: I went into that area this morning, regarding one of the reasons why the witness told me he did not consider it a tout scheme, is because he was told Mr. Gerry was providing information to a man by the name of Richie, and nobody could tout the mob.

This is a statement which I believe has been elicited and the answer has been brought out on cross-examination. I know it is a ticklish situation, but I have here, it not only raises its head with this witness, but with subsequent witnesses.

THE COURT: When was this conversation?

MR. POLLACK: With Kraft.

THE COURT: Kraft's conversation about Perry?

MR. POLLACK: Towards the end of April. The genesis of the conversation is that the conversation took place, trying to ascertain the per-ticket return. The conversation took place providing information to Richie in Brooklyn --

MR. STERENFELD: If Mr. Pollack's statement is -- and I don't like to give away cross-examination, if the statement by Mr. Pollack which he relies upon -- I think in the interests of justice, I must

10

Kraft-redirect

advise the Court that what this witness testified to is mathematically in error. I just computed the last 23 days of betting going back from April 6th or 7th, when he quit, back to the 17th of March, and the payout of over \$3,000 -- I don't know where his arithmetic comes from.

MR. WINOGRAD: At this time, Mr. Pollack is speaking in August of 1973 --

THE COURT: April.

MR. WINOGRAD: I am talking about the conversation that took place -- I am changing it to August, between Gerry and Mr. Kraft at the farm.

From the stenographic minutes, it indicates the FBI had him ask, "Do you know a Richie Perry in Brooklyn?" He said, "No."

"Do you know these guys in Brooklyn?" "No."

"Why are you asking now?"

MR. POLLACK: Coleman told Kraft.

THE COURT: I don't know how far I can sanitize this trial.

(continued on following page)

Kraft-redirect/Pollack

MR. McDANIELS: My recollection is Mr. Kraft never heard of anybody else betting. He said he never heard of anybody else betting, and he wouldn't have continued if he had. He made it a flat statement. The witness couldn't possibly say now that he did. I think that the prejudice far outweighs the probative value. Here is a man that for three months is going back to the bank, et cetera, et cetera, and he doesn't discuss the tout scheme because of the alleged mob affiliations -- the marginal probative value is far outweighed by injecting the mob into this case. The thought that Mr. Pollack is going to tie it in by bringing in McClellan Committee hearings to whether -- whoever is here, would be highly prejudicial.

Number one, it would be contradictory to the witness's testimony, and the marginal probative value is far outweighed by the prejudice, and I object to it on that.

MR. POLLACK: I can see Mr. McDaniels' point as to the prejudice, but I state to the Court the government stayed away from the issue on direct and we didn't try to bring it in, but because of the cross-examination and the discrediting of the

1
2 Kraft-redirect
3
4 witness, it became relevant --

5 THE COURT: I am afraid that is so.

6 MR. ROSEMAN: I would like the prosecutor to
7 place on the record in case this case has to be
8 reviewed, which defense counsel brought out questions
9 that he has to answer on the redirect with such
10 blatant prejudice.

11 MR. POLLACK: I will state this, I believe that
12 the issue was attacked by all, but I believe the
13 issue of the tout scheme was effectively raised on
14 cross-examination, which would compel the government's
15 redirect, recross-examination of Mr. McDaniel.
16 Mr. Castellano and Mr. Roseman, and I believe
17 Mr. Sterenfeld touched on it, too.

18 MR. ROSEMAN: He is saying that Mr. McDaniels'
19 cross-examination leads to an inference of a tout
20 scheme. Let's assume that is true. What does he intend
21 to do, draw another inference with new facts? Your
22 Honor's position --

23 THE COURT: That is the purpose of redirect.

24 MR. ROSEMAN: To something that is relevant.

25 THE COURT: I will permit it and I will caution
the jury.

MR. POLLACK: I might be able to talk to this

3 Kraft-redirect

witness and get it out in a way that might --

THE COURT: Let me send the jury back.

(The following took place in open Court:)

THE COURT: We will take our mid-morning recess. 15 minutes. And I hope to start then.

(The jury left the courtroom.)

THE COURT: All right, what was your suggestion, Mr. Pollack, as to how to bring this out with the least degree of prejudice?

MR. POLLACK: I don't know. I would like to get -- I would like to get the exact wording from Mr. Kraft, as to how he would put it --

THE COURT: Is there anything about this in the 302's?

MR. WINOGRAD: Nothing.

MR. POLLACK: I don't believe there is. I do believe it is in other 302's not turned over yet. Of other witnesses.

I spoke to the witness Friday afternoon and I spoke to him directly, relevant to Mr. McDaniels' cross-examination. I said, "Is this a tout scheme?" And he said, "No." I said, "Why?" He rambled down the reason. Then he comes up with the one reason I brought to the Court's attention. I said to him,

4 Kraft-redirect

-- I asked him how, and he said, "You don't tout those people." I didn't want to ask it specifically, I wanted to be careful avoiding it in direct examination, asking a question where the witness is going to give an honest answer.

THE COURT: I think I should caution the jury that they are not to assume either that any defendant was connected with the mob, or that anybody knew it was a mob situation here.

MR. STERENFELD: What mob?

THE COURT: They are to consider it as to Mr. Kraft's motivation.

MR. WINOGRAD: Your Honor, I accuse Mr. Pollack of prosecutorial misconduct in this case. I think he is devious, and shouldn't be the prosecutor in this case, and has done everything in his power by innuendo to have somebody testify to these facts.

THE COURT: I think I cautioned counsel that the best way to try a case is not by attacking your adversary --

MR. WINOGRAD: He deserves attack. I would like to be heard. First, the prosecutor had no business to have a conference with the Court, without all attorneys present, on this very important subject.

5 Kraft-redirect

1
2 THE COURT: You were invited to be here
3 at 20 to 10.

4 MR. WINOGRAD: I didn't know it was going to
5 take place. I understood it was with regard to the
6 tapes, and it didn't involve my client.

7 THE COURT: I made no ruling at the time.

8 MR. WINOGRAD: I understand. Now you are making
9 a ruling which I think is horrendous.

10 Frankly, I appeared before you on many
11 occasions and I found you to be a fair and equitable
12 man, right down the middle, who called things as he
13 saw them. And frankly, there was a program on tele-
14 vision some time ago, Judd for the Defense --

15 THE COURT: Unrelated.

16 MR. WINOGRAD: Well, there is no semblance of
17 that here. I think you aligned yourself with the
18 prosecutor so close that it is impossible for any
19 of these men to get a fair trial. I can't believe
20 that of you. I know you have an excellent reputation.
21 But you have been so prejudiced in this case, and
22 the reason being that you've tried all those other
23 cases aligned with this case, the obstruction of
24 justice, perjury cases, there were five or six
25 trials, and your mind is so prejudiced against these

6 Kraft-redirect
defendants because of what you heard in previous
trials, that I think it is totally unfair for this to
continue right to this moment.

Now, to have this very prejudicial subject
matter for the jury's consideration -- what is the
purpose in it? To show there was no tout scheme?
You want to show that "the mob" -- well, what mob?
Where is there any evidence of an Italian, Jewish or
Irish anything? Mr. Pollack said mob people.
What does he mean by, that?

Judge, if you weigh the interest in this case
of a fair trial against what the government needs to
show their case, then you are going to have prejudice
outweigh the fairness to have a defendant in this
case.

THE COURT: My experience as a trial lawyer is
that after you have worked awhile on preparation of
a case, that you have a partisan view of the facts
and the law that it is very hard to be objective.

MR. WINOGRAD: So?

THE COURT: I think that affects defense
counsel as well as government counsel.

MR. WINOGRAD: Does it affect the Judge?

THE COURT: I hope not.

7 Kraft-redirect

MR. WINGRAD: I hope not, too. But with all the rulings and statements made by the Court, there is no other indication but that you have been prejudiced against these defendants from the very beginning.

Why does Mr. Pollack want to have this witness testify that because of cross-examination by certain defense counsel, that this was not a tout schema -- he already asked the question on redirect and the question was, Mr. Kraft, in your opinion, was this a tout schema? His answer was No, I don't think it was a tout scheme.

Now he wants to go further and say, Why wasn't it a tout scheme? If those people in Brooklyn were involved, those are mob people, and frankly, you don't tout the mob. Well, your Honor, I think that is hogwash. And that will affect this jury in a prejudicial manner, as to each and every defendant in the courtroom. And if you allow it, you are a party to it, and I can't believe you are going to allow it.

THE COURT: All right, Mr. McDaniels.

MR. McDANIELS: Apparently, it is my cross-examination that Mr. Pollack says prompted his need to bring this out. I appreciate his appraisal of my

8 Kraft-redirect

cross-examination's effectiveness.

I don't see how that opens the door for the government to -- after I listened to the witness on Friday and I heard him make an unequivocal statement-- and now to go into something that will have that statement fly in his face.

Number one, he said he never heard -- he unequivocally stated he never heard of anyone else betting money on Mr. Gerry's tips. In fact, he said if he heard of anything, he would have stopped immediately.

(continued on following page)

S:jk
RL

1 MR. MC DANIELS: No. 2, the statement that
2 he makes which refers to the mob, I say to the Court
3 that Mr. Pollack is going to come in and say, Now I
4 have to prove that these people are the mob. How is
5 he going to prove that? He is going to introduce the
6 McClellan Committee's report.

7 This, your Honor, is the issue which is not
8 properly within the trial by any cross-examination.
9 It is an issue that I cannot conceive of one that
10 creates more prejudice and I furthermore I am talking
11 as to its probative value. This witness said that
12 he worked in this alleged scheme from February until
13 April 6th. Now, as I understand it, in a conversation
14 with Mr. Pullman some time near April he concludes
15 not a -- what in the world was it? The thrust of
16 my cross-examination was what did he think was
17 happening when he lost money on February 6th, what did
18 he think was happening when he went into the bank and
19 borrowed money on February 20th and on March 5th when
20 he was out of money? I think this has no or so
21 little probative value and the prejudice is so
22 clear, that it cannot be admitted at this time.

23 I would respectfully move, if it is not
24 excluded, for a severance.

25 MR. ROSEMAN: I would like to add my voice in

2 1 addition to what Mr. McDaniels has said and not only
2 ask for a severance but a mistrial on the grounds that
3 it is blatantly prejudicial.

4 As Mr. McDaniels said, the marginal probative
5 value, if it does have any, is only being brought
6 into prejudice this jury. We have drivers who are
7 licensed by the State of New York. He is bringing
8 in an element that no trial jury could withstand its
9 overmastering hostility -- for what purpose --
10 except to prejudice this jury against the defendants.
11 This is to charge a fixed race. What does the mob
12 have got to do with this? Is he now going to bring in
13 new issues that each and every defendant is a member
14 of the mob, if there is such a thing as the mob?
15 Are we trying the Godfather here? I don't understand.

16 This is purely bringing in a red herring and
17 it is brought in for no other purpose but to convince
18 this jury to convict on such -- not even tenuous
19 evidence, but not a scintilla of evidence. Why
20 should he need this to prove what? That the mob is
21 involved? Where did he open up to the grand jury --
22 to the grand jury or this jury to say that the mob
23 was involved here? Rather to the contrary. I think
24 it is unfair. I think it is just short of
25 prosecutorial misconduct to try to obtain a conviction

3 1 when the United States Supreme Court has said a fair
2 trial must be given to these defendants and your
3 Honor has to see fit to order us a fair trial. This
4 is not fairness, Judge. You are bringing in some-
5 thing which is out of the figment of what is his
6 name's imagination. He could say he heard it, but
7 where does it come in? Must everything this witness
8 says he heard come into this case?

9 THE COURT: How is Mr. Pollack to counteract
10 the suggestion that Gerry's scheme should have been
11 recognized as a tout scheme?

12 MR. STERENFELD: Not from this man's imagination.

13 THE COURT: I do not think that my rulings
14 should be based on whether you believe the witness or
15 not.

16 MR. BOBICK: I do not think your Honor should
17 say, "How should Mr. Pollack counteract it?"

18 THE COURT: I did not say that.

19 MR. BOBICK: Yes, you did. It is not your
20 job to have him counteract it. It is your job to
21 see we get a fair trial. If you want us to plead
22 guilty, shoot us.

23 This is the point: What you are saying,
24 "If he can't do it by himself I will help him."
25 That's not your job.

4 1 MR. STERENFELD: Your Honor --

2 THE COURT: The record looks like nothing
3 when three people are talking.

4 MR. STERENFELD: This witness testified, "Did
5 you think this was a touting scheme?"

6 And he said, "No." That's refuting it
7 through this witness, but not through the figment of
8 this man's imagination. To explain why he didn't
9 think it was a touting scheme, because he heard if
10 the mob was involved -- Judge, he gave a direct
11 answer to that question. Are you going to allow him
12 to augment it?

13 MR. HOLLMAN: Mr. Pusey is indicted with
14 respect to one race -- the February 3rd race -- and
15 the evidence is going to come in that he may have
16 received \$1,000 with respect to that. That's the
17 crux of the Government's case. There is no question
18 that Mr. Pusey, while involved with that one race,
19 knows Mr. Gerry. Mr. Gerry by virtue of that is
20 going to be connected with mob figures. I have a
21 defendant who has taken a bribe of a thousand dollars.
22 Now he is mob connected directly or indirectly. The
23 prejudice to my client and also Mr. Myer is so great,
24 that I do not know how I could counteract that.

25 In summation, what we have here obviously is

5 1 this: All defense counsel will come out and say it
2 was good handicapping and a good touting scheme --
3 whatever we had at the beginning of the scheme is
4 what we have now. Mr. Pollack disputes that now,
5 not arguing from the charts. He says it is mob
6 dominated, nobody would cross the mob. That's his
7 answer.

8 How I could possibly answer that Mr. Pusey
9 is not a member of the mob -- is that my summation?
10 It is an issue I was never placed in before. The
11 prejudice is so overwhelming that at the very least
12 a severance should be given to whoever is the member
13 of the mob and let him try his own case.

14 MR. HOCHHEISER: On behalf of Mr. Guisti,
15 to put it strictly in legal terms: This witness is
16 not competent to testify to the existence of the mob
17 because he is not a competent witness for that
18 purpose. He is testifying to his belief and his
19 opinion. He is not an expert on organized crime and
20 if your Honor is going to allow this layman -- this
21 self-admitted liar -- to testify as to his opinion
22 that the mob was involved, I ask your Honor to
23 instruct the jury that Mr. Jerry Guisti, with his
Italian name, is as poor as a church mouse. That is
just as relevant as having this person say the mob

1 is involved. Let him say that Gerry Guisti is part
2 of the mob and I will cross-examine him. If he is
3 going to say the mob --

4 THE COURT: Mr. Pollack, do you have anything
5 to respond?

6 MR. POLLACK: Your Honor, I stated my position.
7 I stated that the Government is now asking a question.
8 The witness stated in his answer that he did not
9 think it was a tout scheme. Without justification the
10 answer lays barren -- lays bare. In asking the
11 question, unlike Mr. Winograd's representation of
12 prosecutorial misconduct, if the question were asked
13 and answered without prior notification to the
14 Court, that would be so. I did present the question
15 to your Honor and asked for a ruling.

16 THE COURT: When did you understand this
17 conversation took place?

18 MR. POLLACK: It appeared -- the witness
19 testified on redirect examination that the value of
20 the tickets he won was decreasing in late March,
21 early April, leading up to the April 6th conversation
22 where he was told not to bet the April 7th race and
23 his withdrawal from the scheme. That's my under-
24 standing. Again, your Honor, I know of nothing
25 else. I asked the question -- the same question in

7 1 my office Friday night. The answer came out and I
2 felt it was sufficiently complex to apprise the Court
3 of it and present the Government's position.

4 MR. BOBICK: You have the same thing. Look at
5 the charts, January 24th the ticket was worth \$2,000.
6 January 30th 4,000. On February 2nd it was worth
7 \$2,900. On February 3rd, 2,700. On January 5th it
8 was a loser. On January 6th there were no winners.
9 On February 8th it was \$1,536. February 10th there
10 were none. On February 13th it was 2,400. On
11 February 14, there were none. On February 17th it
12 was 1,200. How much further could it drop? On
13 February 20th it was 840. How far could it drop
14 down to? Where is there a scheme that these things
15 went from \$5,000 down to nothing?

16
17 (continued next page)
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25

ES:em 1 MR. STERENFELD: I did the computations at
2 counsel table for March 17 to April 7 and it aver-
3 aged in excess of \$3,000. I do not care what this
4 witness says.

5 THE COURT: Let me look.

6 On March 16th there were none. On March
7 20th it was \$1421. On March 21st there were none.
8 On March 22nd there was \$1430. On March 26th
9 it was \$1737. On March 29th it was \$1560. On
10 March 30th it was \$2975. On March 31st it was
11 \$3008. On April 3rd --

12 MR. BOBICK: Four thousand and something.

13 MR. ZRAICK: \$4734.

14 THE COURT: On April 4th it was \$800. It
15 was \$1891 on April 5th; April 6th --

16 MR. BOBICK: 8200 on April 6th. \$8,000.

17 THE COURT: He didn't win anything.

18 MR. STERENFELD: That was the payoff,
19 whether he won or not --

20 THE COURT: He did not win anything.

21 MR. STERENFELD: Because he loses, is that
22 an excuse? We are talking about the average payoff.

23 MR. BOBICK: April 7th was \$8,400.

24 THE COURT: He was shut out.

25 MR. STERENFELD: You have read one figure

1 that even approximates \$800. Everything was 12
2 to 15 hundred. Mathematically there is no way his
3 computations can be 8 to 11 hundred dollars.

4 THE COURT: All right, we will take a ten-
5 minute recess.

6 (Recess taken.)

7 THE CLERK: Five boxes of film were marked
8 III -38 through 52.

9 Five boxes of film previously processed by
10 the FBI from Branch 26 marked Government's Exhibit
11 JJJ for identification.

12 MR. BRACKLEY: Is everyone still on those
13 different motions or do you have to voice an objec-
14 tion?

15 THE COURT: You have the benefit of all motions.

16 MR. BRACKLEY: Thank you, your Honor.

17 THE COURT: Gentlemen, in a joint trial like
18 this one of the real risks is that the defense
19 counsel gang up and tend to intimidate the judge.
20 I hope that is not the case here, but I have reviewed
21 a couple of things in chambers and on the averages
22 I find that the average as through March we are a
23 little over \$2200 and from March 16 on a little
24 under \$2,000, so the difference is not very signi-
25 ficant and Mr. Pollack said that Mr. Kraft on

1 2 Saturday gave a number of reasons why he thought
2 it was a tight scheme of which this was only one.

3 I think rather than risk serious error in
4 a trial that has already gone five weeks, I am going
5 to exclude it at this time.

6 MR. POLLACK: Fine, your Honor.

7 May I have a moment to tell the witness
8 when the question is asked not to say anything?

9 THE COURT: Yes.

10 (Pause.)

11 MR. CASTELLANO: Judge, you noticed that I
12 did not say a word in that last gangup on you,
13 but mentally what I was doing --

14 THE COURT: Yes, you get a plus.

15 MR. POLLACK: May I request at this time
16 whether the Court will allow the answer to include --
17 excluding the characterization of the individual --
18 merely stating a guy by the name of Richie had
19 people punching throughout Brooklyn for him?

20 MR. BOBICK: At this point I would have to
21 call your attention to the tape. In the tape he
22 kept asking about Richie and in the tapes Gerry
23 kept on telling him he didn't know Richie Perry.

24 THE COURT: False denials are admissible
25 in evidence against a defendant.

4

Kraft-recross/Jefkowitz

adjudicate it properly, sir. I had a year to finish up my tax reports. This was a year ago, and I just find my records, -and they will be finished when this case is over. The records are still here with the Government.

Q Do you want to add anything else to your answer?

A No, I thought I'd tell you.

Q I see. Mr. Kraft, do you know what time you left this courtroom on Friday last week? Think hard?

A Probably.

Q Well, what time was it?

A 4:30.

Q 4:30. When you left this courtroom did you go out this door or that door (indicating)?

A I went out the side door, sir.

Q Where did you go after you exited that door?

A I went upstairs to pick up my coat in the offices of the Department of Justice.

Q And you went up to the offices, picked up your coat and said nothing to anybody?

A Oh, yes.

Q Who did you speak with?

A I spoke with everybody that was in the offices, maybe ten men.

5

Kraft-recross/Lefkowitz

Q How long were you there?

A Approximately? I believe we got away early that day, maybe 20 minutes, 25 minutes.

Q 20 to 25 minutes, as you spoke, you say, to ten people there?

A Definitely, sir.

Q Who?

A I would --

Q Give me their names?

A Well, everybody --

THE COURT: Give the names.

THE WITNESS: I don't know the names, sir.

They all know me. I don't know their names, but they asked me how's everything going as I walked in.

Q Are you telling this Court today that all that you spoke about was responding to questions of people who asked you how things were going, is that what you are telling us?

A Yes, I am.

Q You did not speak to Mr. Pollack?

A Sure I did.

Q And he also asked you, "Hey, Davie, how are things going?"

A Oh, no, we spoke too.

6

Kraft-recross/Lefkowitz

1

2

Q Oh, you spoke about something else?

3

A Yeah, he told me what time to be here today.

4

Q That's all?

5

A That's it.

6

Q Did you speak to any of the F.B.I. Agents?

7

A Yes sir.

8

Q And they also asked you, "How are things going?"

9

A No.

10

Q What did they talk to you about?

11

A They asked me for a ride home.

12

Q And that's all?

13

A That's right.

14

Q So we have established to everybody's satisfaction

15

that when you left this courthouse on Friday last you dis-

16

cussed nothing with any of these gentlemen, Myerson or

17

Pollack or any F.B.I. Agents, or anyone else, except a request

18

for ride home and how the case was going; is that true?

19

A We talked the time of day, sir.

20

You can't ask me to give you exactly word for

21

word that occurred. I don't know what you're driving at,

22

sir.

23

Q Let's stop being cute. Didn't he ask you to

24

remember a name, Richie Perry?

25

A That's what I wanted you to ask me.

7

Kraft-recross/Lofkowitz

Q That's what you --

A You can ask me all you want because that's not so, sir.

Q Did you discuss testimony that you were going to give when you were going to be called to the stand today; yes or no?

A No sir.

Q So you were telling us that at no time was any discussion had with Mr. Pollack or Mr. Myerson or any of the agents relating to my client, Richie Perry?

A Oh, sure. Sure we discussed it, but not when you said we discussed it on my way home.

Q I didn't ask you on your way home. I asked you in this courthouse on Friday. It didn't happen Friday, okay? Am I right or wrong?

A No sir.

Q Did it happen on Saturday?

A No sir.

Q Did it happen on Sunday?

A No sir.

Q Did it happen today?

A Yes sir.

Q When did it happen today, Mr. David Kraft?

A This morning.

6

Kraft-recross/Lefkowitz

Q When this morning?

A Early this morning, approximately 10:00 O'clock.

Q Where?

A In the offices of Mr. Pollack -- Mr. Pollack's office.

Q Who did you speak with?

A Mr. Pollack and I spoke.

Q And what did Mr. Pollack say to you after saying "Good Morning" to you?

A He asked me if there is anything else that I know that I want to talk about on the redirect, and I brought this up, and we discussed Mr. Perry because this was on the tapes that were played in the previous trial.

Then we continued to discuss Mr. Perry, what I knew about Mr. Perry and how I came to know this.

Q Mr. Kraft, haven't you stated before this, conversation with Pollack this morning that you knew no Richard Perry?

A No, I don't know him, no, sir.

Q Didn't you tell a Mr. Hilly, an F.B.I. Agent, when he rigged you up with a wire set when you were talking to Mr. Gerry on the telephone, that you did not know Richard Perry?

A I just stated to you that I don't know Mr. Perry

9 Kraft-recross/Lefkowitz

if I fell on him. I never knew him in my life.

Q But you sit there now and tell this jury under oath that when you came back this morning to this courthouse the first thing you did was tell Mr. Pollack that you had forgotten to tell him something, right?

A No sir. We discussed the case and what was going to happen in the redirect and I mentioned this about Mr. Perry.

Q So now before you mentioned anything, you are telling the Court and jury that you discussed this case with Mr. Pollack, and what was going to happen in redirect?

A I'm not a lawyer so this is why --

Q You told us that. And there is no question about that, and you could never be a lawyer!

A Thank you, sir.

Q Now, did you tell us --

THE WITNESS: I have taken enough abuse here.

THE COURT: Let's not get into the matter of the legal profession.

THE WITNESS: I have taken enough abuse here.

Q Did Mr. Pollack discuss with you what was going to happen on redirect or did you tell him what you forget to tell him on Friday of last week?

A We had a conversation and I brought up the

10

Kraft-recross/Lefkowitz

things that I could remember about the case and Mr. Perry was one of the things that was brought up. I brought it up. We discussed it and that --

Q Mr. Kraft, did you tell Mr. Pollack what was going to happen on redirect?

A No sir, I have no way of knowing what's going to happen on redirect.

Q He told you what would happen on redirect, didn't he?

A We discussed --

Q I asked you if he told you what was going to happen on redirect?

MR. POLLACK: May the witness be allowed to answer the question.

THE COURT: Let's have the first question.

(Question read.)

THE WITNESS: We discussed Mr. Perry. He said he would bring it up. Was I prepared to tell --

Q Did you hear the question read to you?

A Yes sir.

Q Answer the question, please.

A He did not tell me. We discussed it.

Q He did not tell you what would happen on redirect, is that what you are now telling us?

11

Kraft- Melrowitz

A You are trying to twist my words and I want to say that we talked about Mr. Perry 's angle and that's what we talked about.

Q Mr. Kraft, did you tell this jury a few moments ago that you discussed with Mr. Pollack what would happen on redirect, did you use those words?

A That is correct.

Q There is no question about that, is there?

A We talked about what is known as redirect. That's what I'm here doing, the redirect.

Q Now, my question is a very simple one: you didn't tell him what would happen on redirect, did you?

A No sir.

Q And, did he tell you what would happen on redirect?

A Yes sir.

Q So we now have finally established that he did tell you what would happen on redirect?

A That's correct.

Q And he called your attention to the fact that you are to give testimony about what you heard from somebody else, about a Richard Perry, correct?

A No sir.

Q He didn't tell you that at all?

12

Kraft-recross/Lofkowitz

1 A I told him that, sir. Then he said he would
2 use it.

3 Q Tell me, did you study your notes over the
4 weekend?
5

6 A Sir, I've been living with this thing for a
7 year. I don't need my notes.

8 Q I didn't ask you that. I move to strike it.
9 My question is, sir, did you study your notes
10 over the weekend?

11 A No sir, I didn't study my notes.

12 Q Did you dream about this case over the weekend.

13 A No sir.

14 Q But when you arrived this morning, out of your
15 crystal clear memory that you have exhibited here you
16 immediately told Mr. Pollack, "I must bring up this situation
17 that I learned about Richard Perry"; is that right?

18 A Yes sir. It was brought up.

19 Q I suggest to you that you are nothing but a
20 faker.

21 MR. POLLACK: Objection, your Honor. It is not
22 a question.

23 MR. LEFKOWITZ: It is a statement of fact.

24 THE COURT: In England they allow suggestions.
25 England is the Mother of the common law, so I will

which this came about. Without being allowed to bring it out, I cannot make this seem like it is not a fabrication.

MR. STERENFELD: You keep copious notes, I know, and we don't have the benefit of the record this morning.

THE COURT: You have the minutes --

MR. STERENFELD: The minutes from this morning are not up yet.

It is my recollection, Judge, that Mr. Pollack made the statement on at least two occasions this morning that on Friday night he discussed this matter with this witness. I don't know whether your Honor made notes of that or not, but he made the statement twice that he discussed this case and the prospective testimony on Friday night.

This witness has stated unequivocally that he spoke to ten people and said good night, and nothing more, and didn't discuss it to this morning.

If I go back on recross, and that's the reason I asked for the side bar, I don't want to accuse Pollack of lying, I don't think he did lie. I think he spoke to him on Friday night and discussed this problem with him, or his redirect, on Friday night.

I think that also, Judge, as an officer of this

Q I didn't ask you about anybody else, I'm asking you about this man here!

A No, sir, he did not promise me anything, sir.

Q You never discussed it with him?

A No, sir.

Q You don't want to go to jail, do you?

A Nobody does. Anybody that wants to go to jail is a fool.

Q You know that you are a convicted felon, don't you?

A That's true.

MR. LEFKOWITZ: No further questions.

MR. BOBICK: Your Honor, please?

THE COURT: Wait a minute.

MR. STERENFELD: May we have a side bar for a moment, Judge?

THE COURT: All right.

(Side bar.)

MR. POLLACK: In light of the cross-examination, I respectfully and strenuously submit to this Court that without the context and the background information of this witness' statement, he stands like somebody who dreamt it up, as Mr. Lefkowitz tried to convey.

I have told the Court before this the context in

1 court, this prosecutor has an obligation to stand up and
2 correct his own witness, if his own witness is lying.
3

4 I call upon Mr. Pollack to make a statement of
5 truth. Is this man lying, or is Pollack lying when he
6 said that he discussed it with him on Friday?

7 MR. POLLACK: Your Honor, I am available to take
8 the witness stand, if Mr. Sterenfeld wishes to call me.

9 MR. BOBICK: As an officer of the court --

10 MR. POLLACK: My remembrance is the following:

11 Mr. Kraft is correct, he spent twenty minutes in
12 my office. There were a myriad of people in there, many
13 of which he does not know.

14 During the course of this, I said, "Dave, I feel
15 that the tout scheme has been brought up very sincerely,
16 and I think we have to answer it. I want to know from
17 you why you did not think this was a tout scheme."

18 I never got an answer from the man, simply be-
19 cause people were milling around. I did talk to him
20 yesterday, telephonically, and he gave me the skeletal
21 of what he would say, and we discussed it further this
22 morning between 9:15 and 10:00 o'clock. And that is the
23 best I can remember.

24 MR. BOBICK: You never spoke to him on Friday
25 night?

MR. POLLACK: I spoke to him on Friday, and requested of him to answer that part of the cross-examination.

MR. BOBICK: You say to this court right now that he never spoke to you Friday night?

MR. POLLACK: We spoke. We did speak, but I don't think he gave me the answer.

The first time I got the answer was yesterday, that I can remember.

MR. BOBICK: You told us this morning that you spoke to him Friday night, and he gave him a whole list of items, that's what you said this morning, Mike, you said it this morning right before this court.

MR. POLLACK: I will simply state that for me, Friday through Monday is one day. I will make that statement.

MR. BOBICK: The purpose of the side bar is to get a statement from this prosecutor as to whether or not this man is lying or not.

MR. POLLACK: It is not the prosecutor's job.

THE COURT: You have a statement. What else do you want?

MR. POLLACK: I would like to know about the scope of Mr. Iefkowitz's cross-examination, and the right

1
2 to rehabilitate this witness.

3 THE COURT: I think you can bring in what he was
4 told about Mr. Perry.

5 MR. HOLLMAN: That affects everyone else now.

6 MR. MC DANIELS: What are you allowing him to
7 bring in?

8 THE COURT: That Mr. Perry was described as a
9 member of the mob who could make it difficult --

10 MR. LEFKOWITZ: Your Honor, you are committing,
11 in my humble opinion, a most prejudicial type of ruling
12 at this time, on something that has absolutely nothing
13 to do with this case.

14 I submit to your Honor that this man has committed
15 perjury from that stand --

16 MR. POLLACK: May I ask that Mr. Lefkowitz not
17 speak for the jury to hear?

18 THE COURT: Let's finish the cross-examination
19 and --

20 MR. LEFKOWITZ: I will continue my cross.

21 (Open court.)

22 THE COURT: Is there further recross?

23 MR. LEFKOWITZ: Just a moment, Judge. I am not
24 finished.

25 BY MR. LEFKOWITZ:

V./LH
(1)

1

THE COURT: Mr. Pollack, is your
additional 3500 Material all in?

MR. POLLACK: No, your Honor. 4:30. I'll
just have Mr. Giokas mark it and turn it all over.

THE COURT: All right, gentlemen, I think
somebody has lost his sense of proportion, and I
don't think it's I. We are on recross examination,
Mr. Bobick is on his second recross examination,
and a lot of time is being spent on some figures that
were brought in this morning, and which can be
checked from the charts. And I don't think any
further cross-examination on those figures is
appropriate now.

MR. STERENFELD: How about the credibility
of the witness, your Honor?

THE COURT: That does --

MR. STERENFELD: That's what we're talking
about, Judge.

THE COURT: The question of credibility does
not justify interminable, repetitive cross-examination.
Bring in the jury.

MR. STERENFELD: If your Honor pleases, may
I just be heard before you do that, sir?

MR. POLLACK: May I ask --

MR. STERENFELD: I'm not going to waste your

1
2 time, I'm trying to conserve it.

3 I asked for the side bar specifically be-
4 cause I wanted to confirm my own recollection, and
5 Mr. Pollack confirmed my own recollection. And
6 my intention is to cross-examine this man not as
7 to figures but as to credibility.

8 Now, the fact of the matter is this man has
9 given an impression to this jury, which you know,
10 having heard Mr. Pollack's statement at the side
11 bar, to be absolutely untrue, and I don't want to
12 be precluded from testing that credibility, Judge.
13 That's all I'm asking for.

14 THE COURT: Well, absolutely untrue is a
15 rather extreme word. I think --

16 MR. STERENFELD: Well, Judge, if the man says
17 he didn't talk to Mr. Pollack or Mr. Myerson or
18 to any other people about the fact of this case on
19 Friday, and Mr. Pollack -- and I can say it because
20 the jury is not here -- confirms that he did and
21 confirms again that he spoke to him again Sunday
22 telephonically, then this man is lying, and I have a
23 right to question him about it.

24 THE COURT: Well, it may bear on his credibility,
25 but there shouldn't -- it does not justify interminable,
repetitive cross-examination.

1 3 MR. STERNFELD: I can assure you, Judge, I
2 will only confine my next cross as to that point.

3 THE COURT: All right.

4 MR. POLLACK: Your Honor, the question now
5 on Government's redirect is what to do with Mr. Lefkowitz
6 cross-examination indicating that this statement is a
7 lie born of whole cloth from the witness' help and
8 brought to the Government's attention this morning,
9 and I think that the background of the total situation
10 given in context gives it total relevance and weight,
11 and if not allowed to bring it out --

12 MR. BOBICK: Can we get an Offer of Proof from
13 the Government?

14 MR. ROSEMAN: May I ask this question:
15 Mr. Pollack is arguing law, when I don't think he's
16 stating the law correctly. If any motive, recent
17 motive, or rather if the testimony is attacked as
18 a recent fabrication, do you mean the whole thing
19 then comes in?

20 The only thing that is permitted is a
21 prior consistent statement, to show that he said
22 enough with Richie Perry when he said he did, but
23 you don't let them run the whole gamut in, Judge,
24 that's not the law as I understand the law of
25 evidence.

4

If, arguendo, Mr. Lefkowitz' cross-examination is attacked, or rather that the thrust of Mr. Lefkowitz' cross-examination was to attack the witness' credibility as with a bad motive, that it's recently fabricated, sure, you can go in and show a prior consistency.

But what about a mob? Mr. Lefkowitz never brought that out, and I think your Honor must confirm it, if it's a prior consistent statement.

But where is the mob? He hasn't attacked -- he hasn't said Richie Perry isn't a member of the mob, which is what when it would be permissible to show a prior consistent statement on. But there is no prior inconsistent statement that Mr. Lefkowitz attacked here, only he suggest that over the weekend this name was suggested by Mr. Pollack, which this witness denied, and which he wanted to attack his credibility that it was suggested or he was coaxed.

Where does this mob come in now? I think it goes to show why it stuck in his mind.

MR. ROSEMAN: But that's now what -- that's not what Wigmore says, anyway, that you are bringing it in on a different basis.

MR. BOBICK: Your Honor, can we have a representation by the Government that they never

1 5 suggested to Mr. Kraft that this was the reason
2 that he remembered it?

3 THE COURT: I thought Mr. Pollack had said
4 that now.

5 Do you want to say anything more on it?

6 MR. POLLACK: Your Honor --

7 MR. LEFKOWITZ: I ask, I ask for that.

8 MR. POLLACK: Your Honor, there was a statement
9 made to the witness as to "Why were you convinced
10 this was not a tout scheme?"

11 And the answer was given to me in the double
12 form, the first answer being that "Too many horses
13 were finishing exactly where they were supposed to be,
14 and it wasn't those horses which were causing us
15 problems when we were betting."

16 And the second answer was that Joseph Pullman
17 told him that the price of the tickets were decreasing
18 because Cerry was giving the numbers out to a guy
19 by the name of Richie in Brooklyn, who was connected
20 with the mob, and he said "You just don't tout those
21 kind of people."

22 That was the full context of what was said to
23 me.

24 THE COURT: I'm afraid it's admissible.

25 MR. BOBICK: And is that the full conversation

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6 that you had with him on Friday?

MR. POLLACK: The conversation -- the answer was not given to me on Friday. On Friday my only comment to this witness was "The tout scheme has been brought home very effectively, and now we must -- you must tell me why in your mind you don't think it was a tout scheme."

MR. BOBICK: And what did he say?

MR. POLLACK: We never got a chance to converse after that because of the turmoil in the office. And he left.

MR. BOBICK: And there was no answer to that question on Friday?

MR. POLLACK: That's correct. That's correct.

THE COURT: All right, bring in the jury.

MR. WINOGRAD: One second, Judge. Excuse me.

Judge, this morning after argument by a number of attorneys you went to your chambers to either look up certain cases or discuss this matter with your law clerks. And very frankly, as you came out you made a decision, and that decision was that this reference to this mob situation would be prejudicial in this case.

Now I would like to know what's happened since that decision you made this morning which

1 7 changed your mind?

2 THE COURT: Mr. Lefkowitz' cross-examination.

3 MR. WINOGRAD: What specific questions did
4 Mr. Lefkowitz ask which relate to the introduction
5 of this testimony and questions to be asked by
6 Mr. Pollack? There are no questions that were asked
7 by Mr. Lefkowitz that can open the door to that
8 prejudicial matter.

9 THE COURT: All right, I disagree.

10 Bring in the jury --

11 MR. POLLACK: Your Honor --

12 MR. WINOGRAD: I have to object and ask for
13 a severance as to Peter Vario and Pacciolo.

14 MR. MC DANIELS: I join in that and ask for
15 a severance.

16 MR. POLLACK: May I permit the witness to
17 answer the question?

18 MR. LEFKOWITZ: And your Honor, for the
19 record, this is outrageous, unheard of, and I as an
20 officer of this court resent what I see is going on
21 here, and I say this man that I represent is not
22 getting a fair trial.

23 I move for the withdrawal of a juror.

24 THE COURT: Motion denied.

25 MR. HOCHHEISER: We have all joined -- right?

1 8 THE COURT: All right, go ahead.

2 MR. BOBICK: Your Honor, will the record
3 reveal that have all joined for that motion?

4 THE COURT: Yes.

5 MR. BOBICK: And the decision is the same
6 with respect to all?

7 MR. MC DANIELS: And the motion for a severance,
8 your Honor.

9 THE COURT: Yes.

10 (Jury in.)

11 D A V I D K R A F T, resumed the stand and testified further
12 as follows:

13 RE-RE-DIRECT EXAMINATION

14
15 THE COURT: All right, Mr. Bobick, have you
16 anything further?

17 MR. BOBICK: I have nothing further of this
18 witness.

19 THE COURT: Anyone else, then, on recross?

20 MR. STERENFELD: Yes I have, your Honor.

21 RE-RECROSS-EXAMINATION

22 BY MR. STERENFELD:

23 Q Mr. Kraft, did I understand you to say that
24 when you left the courtroom Friday at 4:30, approximately,
25 you went up to the prosecutor's office?

Q Nothing.

MR. BOBICK: I have no further questions.

THE COURT: Are you ready for re-redirect?

MR. POLLACK: Very briefly, your Honor.

RE-REDIRECT EXAMINATION

BY MR. POLLACK:

Q Mr. Kraft, you testified this morning that you did not believe this was a tout scheme; is that correct?

A That is correct, sir.

Q You also testified that the drivers finished very often where they were supposed to; is that correct?

A That is correct.

MR. LEFKOWITZ: I object to him summarizing evidence given under Oath here from the witness stand in redirect evidence.

THE COURT: Overruled, overruled.

MR. LEFKOWITZ: It is --

THE COURT: Overruled, overruled.

BY MR. POLLACK:

Q Now, was there a second reason that you did not believe you were involved in a tout scheme?

A Yes, sir.

The fact that --

THE COURT: Before the answer is given, suppose I

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2 tell the jury that I spent a good deal of time on this
3 matter this morning because I don't want the jury to be
4 misled by anything which is irrelevant to the case, but
5 I don't think, in light of all of the testimony about
6 conversations with respect to Mr. Perry, that I should
7 tie the Government's hands.

8 What the witness is going to say relates to what
9 Mr. Pullman told him, which you may find was in further-
10 ance of, and during the course of the Conspiracy, but it
11 does not follow that it is true, or that the statements
12 with respect to Mr. Perry, or of anybody connected with
13 him, are true, it relates only to the state of mind of
14 Mr. Kraft in relation to his continuing in the scheme
15 with Mr. Gerry for the period of time that he did.

16 Now, you may ask the question.

17 MR. LEFKOWITZ: I object to the statement made by
18 the Court.

19 MR. BOBICK: I join in that objections.

20 THE COURT: All right, all right.

21 BY MR. POLLACK:

22 Q Will you please tell the Judge and the Jury the
23 second reason why you don't believe you were involved in a
24 tout scheme?

25 A The second reason I didn't think I was in any

1
2 tout scheme was that when Mr. Pullman told me about Mr. Perry,
3 he also added that Mr. Gerry was betting with Mr. Perry, who
4 is connected with a fierce mob in Brooklyn --

5 MR. LEFKOWITZ: I move for a mistrial, and I call
6 this outrageous, prejudicial, for your Honor to permit
7 this witness to say that.

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9 (continued on next page.)
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Kraft - re-redirect/Pollack

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2 THE COURT: We have spent forty minutes on it this
3 morning, and fifteen minutes before I brought him back
4 in, and I have heard your statement before, I decided
5 this is proper, with the admonition I have given to the
6 jury, and for the purpose I have stated.

7 MR. LEFKOWITZ: You haven't ruled on my motion.

8 THE COURT: Motion denied.

9 MR. LEFKOWITZ: Exception.

10 MR. POLLACK: May I have Mr. Karr to read the
11 answer back as far as it was given?

12 (At this point, the Reporter repeated the follow-
13 ing:)

14 ("Answer: The second reason I didn't think I was
15 in any tout scheme was that when Mr. Pullman told me
16 about Mr. Perry, he also added that Mr. Gerry was bet-
17 ting with Mr. Perry, who is connected with a fierce mob
18 in Brooklyn --")

19 MR. HOCHHEISER: Your Honor, may I ask that the
20 jury be given the instruction I requested of the Court
21 concerning Mr. Guisto?

22 THE COURT: I think we ought to have an answer
23 first.

24 MR. DOBICK: We got an answer.

25 MR. STERENFELD: You just heard --

1 THE COURT: Did that complete your answer?

2 THE WITNESS: No.

3 THE COURT: Read it again, Mr. Xarr.

4 (The Reporter then repeated the answer as far
5 as it went.)

6 A (continuing) -- and I felt that Mr. Gerry wouldn't
7 want to play tout schemes with people like that.

8 THE COURT: All right now, with respect to --

9 MR. ROSEMAN: Your Honor, this also is showing
10 the operation of somebody's mind.

11 My objection is based on the legal objection that
12 this witness is being permitted to state what Pullman
13 said was in Gerry's mind, and that was hearsay as to what
14 Gerry was doing with somebody in Brooklyn, who is con-
15 nected with somebody else, and that is not quadruple
16 hearsay, that is quintuple hearsay, and I object to it.

17 MR. STERENFELD: To supplement that, Judge, this
18 witness said, "I felt that Gerry wouldn't be doing this
19 those kind of people."

20 Now, what he felt is wholly immaterial, and is
21 the operation of this witness' mind.

22 THE COURT: I know it would have been immaterial
23 if it had not been for the cross-examination which was
24 related to trying to tell what was in the mind of various
25

1
2 people.

3 MR. LEFKOWITZ: I object to the statement made
4 here as compounding further the needless prejudice.

5 THE COURT: All right, all right.

6 MR. HOCHHEISER: Your Honor --

7 THE COURT: Yes, Mr. Hochheiser?

8 MR. HOCHHEISER: I ask the Court to instruct the
9 jury that Mr. Giusto is not a member of any mob, fierce
10 or pacific, and furthermore, I am here, appointed by the
11 Court to represent him.

12 THE COURT: That last is an improper remark,
13 counsel who are appointed by the Court have the same
14 standing, the same responsibilities as counsel who are
15 retained by a defendant. Retained counsel has no greater
16 rights and no lesser rights than one who is appointed
17 counsel.

18 I thought I made it clear before that the witness'
19 statement is not to be taken as evidence that anyone
20 belongs to any mob, it relates only to the reasons why
21 Mr. Kraft continued in the betting scheme, and did not
22 regard it as a tout scheme.

23 MR. LEONE: I have the same request as to my
24 client, Mr. Annichario, for the record, if your Honor
25 pleases.

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2 THE COURT: It applies to all the defendants, I
3 do not emphasize anyone.

4 MR. HOCHHEISER: Your Honor, as relates to your
5 Honor's statement, I just want it to be understood that
6 I initially did not want to state my reasons in front of
7 the jury, I incorporated the previous reasons by refer-
8 ence, and that was part of the statement that I made be-
9 fore, and so that I made a complete statement.

10 MR. ROSEMAN: Your Honor, I ask for a further
11 instruction of the jury, I know it is sometimes idle,
12 that what is in this man's mind shouldn't bind my client,
13 and that is what Mr. Pollack asked him, it is a conclu-
14 sion, it is an opinion, and it is being let into the
15 trial, where my client is made a defendant by virtue of
16 a Conspiracy.

17 THE COURT: Nothing that the witness says binds
18 anybody. The credibility of the witness is for the the
19 jury to determine, the inferences to be drawn from his
20 testimony are for the jury to determine, and assuming
21 that there was any mob involved, there is no evidence,
22 I said that there is no evidence that any defendant was
23 connected with it, and that includes drivers.

24 All right, I put that in for a limiting purpose.

25 Anything more?

1
2 MR. MERRITT: If your Honor pleases, may I also
3 state that as far as the instruction is given, it is
4 binding only, and only upon Mr. Kraft, and anybody he
5 spoke to, Mr. Pullman, and no one else.

6 THE COURT: Well, this is testimony by a co-Con-
7 spirator.

8 MR. BOBICK: An alleged co-Conspirator.

9 THE COURT: By a co-defendant, and he is not on
10 trial here, and an alleged co-Conspirator.

11 It is the fact that I permitted this and overruled
12 objections to it, does not mean that it is true, and does
13 not mean that I am determining what inference you should
14 draw from it.

15 I think I have covered it.

16 MR. STERENFELD: Do we have cross-examination,
17 your Honor?

18 THE COURT: Yes.

19 RE-RE-CROSS-EXAMINATION

20 BY MR. STERENFELD:

21 Q Mr. Kraft, sir, with regard to the statement that
22 you just made, up until the moment three minutes ago, when you
23 uttered that statement, had you ever mentioned that to anybody
24 before in connection with the Government?

25 A Have I ever -- Have I ever --

1 immensely prejudicial, your Honor should deny it./

2 THE COURT: Mr. Pollack, have you anything to
3 say on that?

4 MR. POLLACK: Your Honor, the --

5 THE COURT: Stand up, please and speak aloud
6 so people can hear.

7 MR. POLLACK: Your Honor, the statement is not
8 being made alleging against Mr. Perry, it's a state-
9 ment made as to the state of mind of this witness and
10 the defendant Gerry, who he has said in prior testimony
11 or prior statements told him this.

12 And it bears direct evidence on, one, the
13 cross-examination of Mr. Lefkowitz of the witness
14 David Kraft, it bears direct relationship to the
15 statement which Mr. Kraft says was related to him by
16 Mr. Pullman, and whether or not Mr. Pullman would
17 have that knowledge to transmit to the witness Kraft,
18 as Kraft so testified.

19 MR. BOBICK: Your Honor, you both -- Mr. Pollack
20 says that he wants this witness' state of mind. I know
21 he doesn't mean that, because we heard the tapes as to
22 what his state of mind should be from the representations
23 made by Walsh and Mr. Pollack to this witness and that's
24 only part of it.

25 So if you want this witness' state of mind

1 when he's heard something, or something was told to
2 him, then how can you say you don't think it's
3 important that the tapes come in, when this here
4 statement comes in?

5 You know if you ask for the state of mind and
6 you open up the door for all his states of mind at
7 all times.

8 MR. MC DANIEL: Your Honor, I thought what this
9 had bearing on possibly was the state of mind of the
10 witness David Kraft. There's nothing in here that
11 says Pullman in any way communicated whatever he
12 may have had -- I think that's a serious question --
13 to the witness Kraft. And I thought it was on
14 precisely the question of what was in the witness
15 Kraft's state of mind that your Honor was concerned
16 about after hearing the tape, namely, that the
17 conversation that goes along about "How are we going
18 to get them off?" is in front of the jury. "How is
19 this going to get out? Nobody knows this." Is that
20 the issue exactly that was in Kraft's mind?

21 There is nothing in here that says Pullman
22 had a conversation with David Kraft and passed on
23 information to David Kraft.

24 MR. STERENFELD: And they finally tried to use
25 the word "true" Judge, to represent the word mob, but

1 I cross-examined Mr. Kraft from the issue of where
2 it was in the statement, and he searched and searched,
3 and got a little aid from the prosecution, as we know
4 from the tapes, and the word mob was transposed in
5 the 302 to be the word crew, "crew on the street."

6 MR. POLLACK: May I state, your Honor, that
7 prior to -- in the same report, prior to Mr. Pullman's
8 characterization of Mr. Perry, he also used the
9 word crew. That would be at Page 206. "An individual
10 known to him only as Richie, with daily numbers to be
11 left out on Superfecta betting, and Richie had a crew
12 out on the street punching and collecting for him."

13 MR. STERENFELD: Where does that relate to
14 "fierce mob"?

15 MR. POLLACK: Subsequent to that, your Honor,
16 on Page 209 Pullman described Richie, whose last name
17 he did not know, but "son of a made man in Brooklyn,
18 male, white, skinny, tall, six foot to six foot two
19 inches, usually wears glasses, black horned rimmed,
20 black hair, early thirties."

21 MR. STERENFELD: The Government had a crew out
22 on the street following us around too, Judge.

23 MR. ROSEMAN: May I say something, Judge?

24 THE COURT: Well, I'll take a statement on that
25 at 4:30. I'm going to admit the evidence on this

1 theory: the question in this case is whether Mr. Gerry
2 was engaged in a scheme to affect the outcome of
3 harness races by bribery. Mr. Gerry's belief as to
4 the nature of the people he was dealing with has a
5 bearing on whether he would have used a con game or
6 whether he was actually bribing drivers, as he asserts.

7 The statement does not constitute evidence that
8 Mr. Perry was in fact a member of any other
9 organization. It bears simply on what Mr. Gerry knew
10 or believed at the time this went on, and on whether
11 this was or was not a scheme to affect the outcome
12 of harness races by bribery.

13 We'll continue --

14 MR. MERRITT: If Your Honor please, before you
15 leave may I state my objection?

16 THE COURT: Yes.

17 MR. MERRITT: For the record now, because on
18 the tapes that we have heard in open court, in the
19 absence of the jury, Mr. Kraft said he knew of no
20 such mob, and it was told to him by somebody on that
21 tape, whether it was FBI or Mr. Pollack, "Well, that's
22 because you're from New Jersey." Whoever it was,
23 it was "Because you're from New Jersey."

24 MR. LEFKOWITZ: Your Honor, I must correct the
25 record, if it please the Court: I don't think your

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Pullman-direct-Pollack

me pictures. And they told me this is the fellow you are talking about. So that's what I know.

Q Was that the fellow you were talking about?

A I don't know. I never seen him.

Q Well, sir, did you describe Richie to the FBI?

A I don't know if it was Richie I described to them.

Q Well, sir, did you tell the agents of the FBI --

MR. HOLLMAN: I will object to this in view of the fact he has no recollection and he denies it in fact, I would object to that.

THE COURT: No, overruled.

Q Mr. Pullman described Richie whose last name he didn't know but --

MR. LEFKOWITZ: Objection to him reading from a statement not in evidence.

THE COURT: Yes. I think the way to do it, Mr. Pollack, is to say did you make the statement described in this report.

Q Well, did you make this statement describing Richie in conversations with Mr. Gerry about Richie to the FBI?

A The statement I made -- I don't know the statement I made. But I know it is all out of context because

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Pullman-direct-Pollack

there are a lot of things here and there is no way it is --

Q Well, do you deny making that statement, sir?

A Which statement?

Q The statement at the top of page 209 starting with the word "Pullman" and ending with the term "30s."

MR. ROSEMAN: I object to the form of the question and the use of the word denied. The witness already answered that. He stated that that statement in the FBI report is out of context. Now, that says that the statement of Mr. Pollack asked him is not what he is stating now --

THE COURT: Well, I think he can say whether he affirms it or denies it.

A I deny the statement. There is words in here that you fellows put down.

Q Mr. Pullman, did you tell the FBI that Richie whose last name you didn't know but who Gerry on several occasions referred as the son of a made man in Brooklyn, as a male, white, skinny, tall, six foot to 6'2", wears glasses, used black horn-rimmed, black hair, late 40s or early 30s --

A I never called a man a made man in my life. That's your statement. And you people put that statement. All my life I never spoke like that because I don't talk made man. That's Greek to me as far as made man. I would

7 Pullman-direct-Pollack

use other words.

Q What other words did you use, sir?

MR. ROSEMAN: Objection.

THE COURT: Overruled.

A I don't know. I would use other words. I wouldn't use those words.

Q What other words would you use?

A I don't know. But I wouldn't use those words because made man doesn't mean nothing to me. It could be a businessman that was made, financially.

THE COURT: All right, continue on another question, Mr. Pollack.

MR. POLLACK: Yes, sir.

BY MR. POLLACK:

Q Now, sir, did you have a conversation with Special Agent Walsh on June 15, 1973?

A I had a lot of conversations with Mr. Walsh. I don't know the specific date.

Q I show you --

MR. POLLACK: May I have these two exhibits marked.

THE COURT: One-page document dated June 15, 1973 marked Government's 500 for Identification.

Two-page document of June 26, 1973 marked

Direct-Proman

evidence.

THE COURT: Overruled.

MR. BOBICK: May -- Mr. French is available.

I just feel that -- Well, I object, your Honor.

THE COURT: Objection overruled.

Q Did you tell the FBI that with regard to Richard Perry you stated you knew Perry as an individual who used to go to Sherman's room at the Carvel Inn? You stated you knew Perry as a bookmaker.

MR. LEFKOWITZ: I move for a mistrial.

(Discussion at the sidebar, out of the hearing of the Jury.

THE COURT: Do you want to start over and be tried again with Mr. Popfinger?

MR. LEFKOWITZ: I'm not interested in Mr. Popfinger. You just permitted this witness over my objection to let this jury hear from him that this man was a bookmaker.

THE COURT: Do you have any objection to a mistrial?

MR. POLLACK: Absolutely.

THE COURT: Motion denied.

(The following occurred with the hearing of the Jury,)

1
2 BY MR. POLLACK:

3 Q You further advised that Perry was the money-
4 man with the Superfecta betting, that Perry -- you further
5 stated that --.

6 MR. BOBICK: Could we ask the witness
7 question by question, rather than reading?

8 THE COURT: You better start at the beginning
9 again and stop after the first sentence, and ask
10 him.

11 Q Did you tell the FBI this with regard to
12 Richard Perry you knew Perry to be an individual who used
13 to go to the Superfecta?

14 A Repeat that.

15 Q Did you tell the FBI that you knew Perry as
16 an individual who used to go to Michael Sherman's room
17 at the Carvel Inn?

18 A I don't remember ever seeing Richard Perry
19 at Michael Sherman's room.

20 Q Did you state --

21 THE COURT: Let me tell the jury now as I
22 have told you before, I am allowing these questions
23 to impeach Mr. Proman's credibility but the fact
24 that the questions are asked doesn't justify you
25 in finding that the statements made in the
questions are true. It's only for impeachment.

Direct-Proman

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2 MR. BOBICK: Also this testimony is not
3 binding to any defendant here. It's only impeaching
4 him.

5 THE COURT: If it's not considered, it's
6 not impeaching them on anyone.

7 MR. BOBICK: You're instructing that it is not
8 to be considered against any defendant?

9 THE COURT: That's right.

10 (Continued on the next page.)
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Direct-Proman

BY MR. POLLACK:

Q Did you tell the FBI that you knew Perry was a bookmaker from Brooklyn before he became involved in the Superfectas?

A I don't recall saying that.

MR. LEFKOWITZ: I renew my motion made at sidebar and before this Court for a mistrial.

THE COURT: Denied.

Q Did you tell the FBI Perry was considered to be the moneyman behind the Superfecta betting?

A I don't recall that.

Q Did you tell the FBI that Sherman told you that Mr. Perry was working with Forrest Gerry?

A Repeat that.

Q Did you tell the FBI that Sherman indicated to you that Perry was working with Forrest Gerry?

A That who?

THE COURT: That Perry was working with Gerry.

THE WITNESS: No, I don't recall saying that.

Q Did you tell the FBI that Sherman was associated with Gerry and Gerry would come to his room and Sherman told him he had an agreement with Gerry whereby he was not supposed to play any combinations on the Superfecta on his own, and was not to tell anyone else about

with the 10 winning tickets?

A Yes, sir, he did.

Q What did he do, sir?

A He said that he gave two tickets to Seymour Coonan to cash for him, and he said he returned 8 tickets to Michael Sherman.

He stated Sherman arranged to have the tickets cashed, and he advised that he thought that Sherman had indicated to him that they were cashed by an individual named Irwin Rosen.

Q Now, sir, during the course of that conversation, did Mr. Provan mention one Richard Perry?

A Yes, sir, he did.

Q And will you tell the ladies and gentlemen of the jury what Mr. Provan said regarding Richard Perry?

A During this interview he said that he knew Richard Perry as an individual whom he had seen in Michael Sherman's room at the Carvel Inn --

MR. STERENFELD: Your Honor, I don't want to interject, I would just like to approach at side bar for a minute.

THE COURT: I see Mr. Lefkowitz isn't here.

MR. STERENFELD: That is what I wanted to say.

THE COURT: Mr. Perry is here.

I have said that we start on schedule, and I have permitted testimony concerning the other conversations without objection, so I think I will treat your comment as an objection on behalf of Mr. Perry and I will overrule the objection and let the witness continue.

MR. STERENFELD: May we have a continuing objection at this time, and I make it on behalf of Mr. Lefkowitz and Mr. Perry, since he is not here.

THE COURT: Yes, yes.

(continued next page.)

1
2 A He said that he knew Richard Perry as an
3 individual whom he had seen in Michael Shezman's room at
4 the Carmel Inn, at Yonkers, and that he knew Perry to be a
5 bookmaker from Brooklyn.

6 MR. WINOGRAD: Objection, your Honor.

7 THE COURT: Well, let me comment to the jury
8 now.

9 The basis for receiving this evidence is not
10 that here is testimony by Mr. Proman after the con-
11 spiracy, which is evidence that you can use to help
12 convict the defendants, but it is evidence that you
13 can consider in determining whether Mr. Proman's
14 repudication of part of his grand jury testimony is
15 to be accepted in determining the credibility of the
16 statements that he made here, that were contrary to
17 his grand jury testimony.

18 Now I intend to receive it and I trust that
19 Mr. Pollack will inquire only about statements which
20 were read to Mr. Proman when he was on the stand
21 and which he denied making or did not recall making.

22 MR. POLLACK: That is my intent, your Honor.

23 THE COURT: All right.

24 BY MR. POLLACK:

25 Q I believe, Mr. French, you were speaking

2 French-direct

about Mr. Proman's comments about Richard Perry?

A Yes.

This is on the first interview; is that correct?

Q Yes, sir.

A He also said that he considered Mr. Perry to be the money man behind the Superfecta.

Q Did Mr. Proman make any statements regarding who would visit Mr. Sherman in his room?

A Yes, he did, he made mention of the fact that Perry had met with Sherman in his room, and that Mr. Gerry also had met with Sherman in his room at the time.

Q Now, sir, Did Mr. Proman ever discuss the driver, Del Insko, on this occasion?

A Yes, he did.

Q Did he discuss any motivation by Mr. Insko for his involvement in this --

MR. STERENFELD: That is objected to, if your Honor please.

THE COURT: No, I think this also relates to the testimony about which -- or statements about which Mr. Proman was questioned yesterday, and again this relates only to Mr. Proman's credibility insofar as his grand jury testimony is concerned.

French-cross/Lefkowitz'

Q Isn't it a fact that he told you he doesn't know Richard Perry personally, but he heard his name?

A I don't recall that. I recall him saying he knew who he was and he put him in the room with Sherman -- knew who he was, whether it was personal or not, I don't know.

Q Isn't it a fact that Mr. Proman told you that Sherman didn't tell him anything personal about Richie Perry at all, isn't that a fact?

A He mentioned that he knew that he was a bookmaker. Whether it was personal or not, I don't know, sir.

Q You had to get that "bookmaker" in, didn't you?

A It was stated both times.

Q You do know, do you not, that Mr. Proman testified before the Grand Jury on the 29th of October, 1973, do you not?

A Yes, sir, I see the minutes there, yes.

Q You only see that because I showed it to you, otherwise you are telling this jury you didn't know that?

A I knew he testified before the Grand Jury. I didn't know what date, sir, yes.

Q Didn't you go over his Grand Jury minutes before you took the stand this morning?

1 Rothstein-cross/Pollack

2 I was going to jail so many times, I thought
3 I -- he kept putting me in jail all the time.

4 THECOURT: How many days did you spend
5 there?

6 THE WITNESS: I didn't spend there, because I
7 went along with it.

8 THE COURT: All right, go ahead.

9 THEWITNESS: I didn't want to go to jail.

10 Q And sir, did you ever express fear for your
11 personal safety to anybody during the course of this
12 proceeding?

13 A I can answer that. I was never threatened
14 by anybody, I never expressed fear.

15 THE COURT: The question was whether you
16 ever expressed fear?

17 THE WITNESS: No. I -- No.

18 Q Sir, do you remember this? Do you remember
19 probation office Eder testified on Friday last?

20 A Yes, I remember that.

21 Q And did he give this answer to this question:

22 "Question: Did he tell you he had knowledge
23 that the races were fixed?

24 "Answer: May I explain that? I found this
25 man to be very reticent and very reserved, he did

Rothstein-cross

1
2 around the conflict. It's a total. My problem is
3 this man was not asked this on direct examination.
4 The direct examination of our -- Here is the
5 statement and I'd like -- I believe we have a
6 right to impeach it.

7 MR. LEFKOWITZ: Judge, for the record I object
8 to it. I made no such inquiry in any examination.

9 I furthermore have asked for the right and
10 privilege to recall this witness for cross-examination
11 and when that was refused I called him as a witness
12 myself for the defense. I never asked him any ques-
13 tion about any of this that he is relating.

14 THE COURT: Well, you asked him if he knew
15 anything about Ritchie.

16 I think you'd better leave it out.

17 (End discussion side bar.)

18 Q Mr. Rothstein, did you tell agents of the FBI
19 on July the 12th, 1973, that Constance Rogers had told you
20 that if any problems developed with the Superfectas they
21 should handle it, because they were doing business with
22 a guy by the name of Richie, whose last name was unknown?

23 A I don't remember. I don't think I said that.

24 MR. POLLACK: May I have this marked?

25 THE WITNESS: Did I --

Rothstein-cross

Q Mr. Rothstein, didn't there come a time prior to the time that you testified that that money was stopped?

A Was it? Repeat that.

Q Didn't there come a time prior to the first time that you testified in this proceeding that any funds to you were stopped?

A Yes, were stopped.

Q I show you Government Exhibit 527 and ask if you have seen this document before, Mr. Rothstein.

THE COURT: Or a copy of it.

A Yes, you showed it to me in your office.

Q What does that document say, Mr. Rothstein?

A It says to stop payment.

Q Why?

A I went home.

Q And what did that have to do with your payments?

A Huh?

Q What did that have to do with your --

A Yes, but I was home for two months before that.

Q What did that have to do with your payments?

A Nothing. Stopped them.

Q Well, does it say --

MR. BOBICK: Objection to what it says.

THE COURT: It's been marked.

Rothstein-cross

MR. POLLACK: Yes, it has, your Honor.

MR. BOBICK: Has it been offered?

MR. POLLACK: I'll offer it into evidence.

MR. BOBICK: May we see it?

THE WITNESS: To that question --
You didn't let me answer.

MR. POLLACK: There is an objection before
the Court.

THE WITNESS: All right, sir.

MR. BOBICK: Your Honor, first of all, it's
not the best evidence.

THE COURT: Let me look at it.

MR. BOBICK: It's not the original. Second
of all--

THE COURT: The witness said he saw it.

MR. BOBICK: -- I think it's improper. Third,
it's not signed, and fourth, it shouldn't come in.

THE WITNESS: I don't know if it's that, but
I seen something like it.

MR. BOBICK: Your Honor, I think that it's
a little prejudicial.

THE COURT: I think the last clause may be
somewhat questionable.

MR. BOBICK: Yes.

1
2 MR. POLLACK: Your Honor, it goes to the
3 very nature of the witness's denial.

4 MR. BOBICK: Your Honor, I think that --

5 THE COURT: Let's come to the side bar a
6 minute.

7 (Discussion side bar:)

8 MR. POLLACK: Your Honor, not only was this
9 put down --

10 MR. MC DANIELS: What does it mean?

11 MR. POLLACK: This man after that was done came
12 to me and asked the Government whether they would put
13 him back on relocation because he needed the money,
14 could he go back to Newark and get the money?

15 And I say, your Honor, it's to motivation and
16 intent, what is moving this man to do this?

17 This witness had moved back to his home, and
18 based upon his own -- whatever motivation he had,
19 he no longer was in fear of his life, and because
20 of that there was no need to continue subsistence,
21 and because of that this was stopped.

22 I think the Court will check the date of this
23 memorandum, which was prior to his ever testifying
24 in this trial, and I think it relevant, your Honor,
25 that this witness, who is now -- that this should

Rothstein-cross

be brought up to test.

MR. MC DANIELS: Your Honor, my understanding was that he said that the subsistence was stopped before he testified. Maybe I haven't been following. It's pretty hard to follow the man.

THE COURT: Well, this goes into the reason for stopping it.

MR. POLLACK: When he moved home.

MR. MC DANIELS: He moved home. So what do we need this for? So they stopped it.

MR. POLLACK: He denied any threat to his life or any fear.

MR. MC DANIELS: Well, I don't see -- I think this is just a statement, "insecure." I don't know whether that means "we consider him to be a witness," or "secure," or "not secure." I mean he said he moved back to his home. You said the thing stopped. I think the point you are trying to make -- the point you are trying to make is he wasn't getting any money, and that's the reason he --

MR. BOBICK: But, your Honor, it seems --

THE COURT: No, it's a question whether he was afraid.

MR. MC DANIELS: Yes, what is this -- what

Rothstein-cross

does this have to do with whether he was afraid?

There is nothing in here to say he was afraid.

It is only in here that they were paying him money, nothing saying he was afraid.

MR. BOBICK: If you want to interpret, you can interpret all kinds of things, but the point is this is an unsigned copy. It's not the original, not the best evidence, and legally I don't think it should be admitted.

MR. POLLACK: It was written --

THE COURT: It has to do with the witness's background of attempt at recantation. I'm going to receive it.

MR. POLLACK: May I read it to the jury, your Honor?

THE CLERK: Government Exhibit 527 marked in evidence.

(So marked)

THE COURT: All right.

(End of discussion side bar.)

MR. POLLACK: Government's 527 says -- it's dated April 5, 1974, "Termination of subsistence for Seymour Rothstein."

"Pursuant to my" -- it's from myself to the

Rothstein-cross

Department of Justice.

"Pursuant to my conversation with Hopeburn(ph) on February 3, 1974, please terminate subsistence for Seymour Rothstein at once. This request is made because the witness has left his area of relocation and returned to his home, and can no longer be considered secure."

THE WITNESS: Your Honor --

Q Now, Mr. Rothstein, I showed you that document, didn't I?

A Yes.

Will your Honor please let me say something?

THE COURT: In your turn, in your turn.

Mr. Pollack.

Q Mr. Rothstein, after I showed you that document, did you not appear in my office and ask me if you'd be allowed to go to Newark next month and receive money?

A I did not. You said to me, "I'll try to get you back your money."

Q Isn't it a fact, Mr. Rothstein, you came and asked if I could get you back on subsistence because you didn't have any money?

A No, I asked for my checks, when I'd get that \$20 a day.

1 here.

2 (The defendant Turcotte then entered the
3 Courtroom.)

4 THE COURT: Is Mr. Lefkowitz -- oh, yes,
5 Mr. Lefkowitz (indicating younger Mr. Lefkowitz)
6 is here.

7 All right, we are all here.

8 Let us bring in the jury.

9 (The jury then took its place in the jury
10 box.)

11 CHARGE TO THE JURY:

12 THE COURT: Mr. Miele and ladies and gentle-
13 men of the jury:

14 I am addressing you but of course what I
15 say is of concern to the defendants and counsel for
16 the defendants and the government and everyone in
17 this public Courtroom, but you are the ones who
18 are going to be carrying out your duties in line
19 with what I will say.

20 It has been a long road, but we are now
21 approaching the end, where you will perform your
22 duties as judges of the facts in this case.

23 Some of the legal rules have already been
24 mentioned in my comments to you during the trial,
25 but it is my duty now to give you a full set of

instructions on the law that applies to the case.

In my instructions, I will deal first with the general principles that apply to all criminal charges, then the specific rules of law that apply to the charges in this case and some of the rules on evaluating evidence, a few comments on the evidence and finally, something about how you should proceed in reaching a verdict.

I have had the benefit of numerous suggestions from various counsel about what they wanted me to include in these instructions, and if you find that there is some repetition in my remarks and in the way we have these in, please be patient with me.

(Continued on next page.)

EK:ss
am2

Charge of the Court

THE COURT: (Continuing.) In our adversary system of criminal justice, it is the prosecutor's duty to do his best to present the government's case, and it is the duty of defendants' counsel to do their best to represent their own clients' interest and to do this vigorously.

The prosecution has no different standing in the Court than defense counsel.

This has not been an ordinary case. It has been very long and it has involved many defendants, but I do not see how I could have split the case into separate trials.

The joint trial is not in my judgment unfair to defendants, as Mr. McDaniels said yesterday. In fact, a joint trial has some serious disadvantages to the government, and that has been true here.

There has been an unusual amount of ill will between counsel, and bad manners, and unusual charges of misconduct levelled against government counsel and charges against at least one of the defense counsel. I hope you won't think this is a typical case in this Court. None of the circumstances should affect your judgment on the facts,

1 except as government efforts to persuade a witness
2 to testify may affect the credibility of witnesses.
3

4 The case is entitled The United States of
5 America versus Peter Vario and 27 other defendants.
6 A total of 16 are now on trial here.

7 You are not trying the qualifications of
8 the counsel for any party, or the propriety of
9 their conduct. Any disciplinary matters will be
10 in a separate proceeding after this case is over.

11 The issue for you to decide is whether there
12 has been a criminal violation of the sports bribery
13 statute.

14 You should decide the merits of the govern-
15 ment's case and the question whether there is a
16 reasonable doubt of the guilt of the defendants,
17 and not the efforts of their various attorneys or
18 the relative abilities of the attorneys.

19 Although there are 16 defendants on trial,
20 each defendant should be judged separately as you
21 would do if he were being tried alone.

22 The length of the trial has nothing to do
23 with the issues. You should not be concerned with
24 the amount of effort the government has expended
25 in the case, or the length of time that the defendants

10 Charge of the Court

1 and their attorneys have spent in Court, but only
2 with the question whether or not there is a reason-
3 able doubt of any defendant's guilt.
4

5 As jurors, you must follow the law as I
6 state it in my instructions, regardless of whether
7 you think my statements of the law is right.

8 As judges of the facts, you must determine
9 the truth or falsity of the testimony, and the
10 question whether or not each particular defendant
11 is guilty, on your recollection of the evidence,
12 supplemented by being brought back into Court if
13 you think necessary, to hear any particular testimony
14 that you think should be repeated.

15 What counsel has said during the course of
16 the trial or during their summations, is not to
17 be taken in place of your own recollection of the
18 facts or the evidence in this case. Whatever I
19 may say about the facts in my charge is again not
20 to serve in place of your own recollection.

21 Discussions between counsel and the Court
22 about the admissibility of evidence are not
23 evidence in the case and you should not penalize
24 or favor any party because of what you heard in
25 these discussions. And you should not be affected

1 11 Charge of the Court
2 by any rulings the Court made or objections to
3 evidence or the manner in which the rulings were
4 made.

5 You are to perform your duties without bias
6 or prejudice for or against any party. The law
7 does not permit jurors to be governed by sympathy
8 or prejudice or public opinion.

9 As I told you at the beginning of the case,
10 the law presumes that a defendant is innocent of
11 crimes and the law permits nothing but legal evidence
12 presented before a jury to be considered in
13 support of any charge. The presumption of innocence
14 is not evidence, but the presumption is enough in
15 itself to acquit a defendant unless you are all
16 satisfied beyond a reasonable doubt of the guilt
17 of an individual defendant from all the evidence in
18 the case. The fact that you may find one or more
19 of the defendants guilty or not guilty, should
20 not influence your verdict with respect to any
21 other defendant, since you must give separate per-
22 sonal consideration in the case to each individual
23 defendant.

24 The standard that has been described and
25 which you must apply in reaching your verdict is

12 Charge of the Court

1 proof beyond a reasonable doubt. A reasonable
2 doubt is a doubt based upon reason and common sense,
3 arising either from the state of the evidence or
4 from the absence of evidence. A reasonable doubt
5 does not mean one, that a juror seizes arbitrarily
6 to avoid performing an unpleasant task. A reason-
7 able doubt does not mean a possible doubt, for it
8 is rarely that anything can be proved to an
9 absolute certainty or beyond all possible doubt.
10 The law does not require this. It requires proof
11 beyond a reasonable doubt.
12

13 One of the definitions that Courts have used
14 to help understand the term is that a reasonable
15 doubt refers to the sort of doubt that would make
16 you hesitate to act in important matters in your
17 own life.

18 Frequently you receive conflicting advice
19 or statements of fact, perhaps from people you did
20 not choose as your advisors, when you are trying to
21 determine an important step in your life. Your
22 determination in this case is an important one to
23 all the parties and you should apply that principle
24 in determining whether there is such a doubt as
25 would make you hesitate to bring in a guilty

13 Charge of the Court

1
2 verdict.

3 This requirement of proof beyond a reason-
4 able doubt operates on the whole case. It does not
5 mean that each bit of evidence must be proved be-
6 yond a reasonable doubt. It means that the sum
7 total of the evidence, including direct examination
8 and cross-examination, and government evidence and
9 defense evidence -- the sum total must satisfy you
10 beyond a reasonable doubt as to each element of the
11 crime charged against a particular defendant, or
12 else you must acquit him.

13 It is a serious matter to find a citizen to
14 be guilty of a felony and to subject him to criminal
15 penalties and you can reasonably consider in this
16 finding whether you have a reasonable doubt. But
17 if you are convinced beyond a reasonable doubt of
18 any defendant's guilt, it is your duty to bring in
19 a verdict of guilty.

20 The fact that a defendant did not take the
21 witness stand does not create a basis for any
22 presumption or inference unfavorable to him. It
23 is not a matter which you can discuss in the jury
24 room as having any bearing on the case.

25 I told you before you were selected as jurors,

1 14 Charge of the Court
2 that a defendant is entitled to rest on the pre-
3 sumption of innocence in his favor and that he has
4 no duty to testify or even to introduce any evidence
5 in his own behalf. No one of you expressed any
6 disagreement with this rule, so you must follow my
7 instructions in this respect.

8 (Continued next page.)
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Charge of the Court

THE COURT: (Continuing.) The burden of establishing guilt beyond a reasonable doubt rests on the prosecution at all times and never shifts.

Now, I will proceed to read the indictment to you since that is the piece of paper that creates the issues that you are to try. I want to repeat, though, that the indictment is not any evidence of any defendant's guilt. It is merely a formal way in which the government brings a person or persons accused of crime to trial.

You must not be prejudiced in any way against a defendant because a grand jury has returned an indictment. Each defendant has pleaded not guilty to the charges in the indictment, and the indictment and the pleas create the issues for you to decide.

The indictment is in two counts.

Count 1 says that:

"On or about and between the 1st day of January 1973 and the 13th day of April 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant Peter Vario, the defendant Forrest Gerry, Jr., the defendant Del Insko, the defendant Carmine

1 Abbatiello, the defendant William Gilmour, the
2 defendant Frank Popfinger, the defendant Ben Webster,
3 the defendant Kenneth McNutt, the defendant William
4 Hudson, the defendant Maurice Pusey, the defendant
5 George Foldi, the defendant William Myer, the
6 defendant Elden Turcotte, the defendant Real Cormier,
7 the defendant Dale Ross, the defendant Anthony
8 Annichario, the defendant Angelo Calanna, the de-
9 fendant Howard Bruss, the defendant Jerry Giusto,
10 the defendant Richard Perry, the defendant Michael
11 Sherman, the defendant Michael Tamburo, the defendant
12 Joseph Pullman, the defendant Constance Rogers, the
13 defendant Louis Valdez, the defendant Seymour
14 Rothstein, the defendant Gaythorne Angell and the
15 defendant Bruno Facciolo wilfully carried into
16 effect, attempted to carry into effect and aided
17 and abetted one another in carrying into effect
18 and attempting to carry into effect a scheme in
19 commerce to influence by bribery sporting contests,
20 to wit the outcome of harness races at Yonkers
21 Raceway and Roosevelt Raceway, with knowledge that
22 the purpose of such scheme was to influence by
23 bribery the aforesaid sporting contests."

24
25 Now Count 2 states:

"On or about and between the 1st day of January, 1973 and the date of this indictment, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere" -- the same defendants that I named and that are named in Count 1 -- "...and others known and unknown to the grand jury, wilfully conspired with each other and with others known and unknown to the grand jury to attempt to carry into effect and carry into effect a scheme in commerce to influence by bribery sporting contests, to wit the outcome of harness races at Yonkers Raceway and Roosevelt Raceway, with knowledge that the purpose of such scheme was to influence by bribery the aforesaid sporting contests.

"It was part of said conspiracy that the defendants and co-conspirators would bribe and aid and abet in bribing the drivers of harness racing horses to influence the outcome of 'Superfecta' harness races at Yonkers and Roosevelt Raceways. The defendants and co-conspirators would arrange that certain harness racing horses would not finish among the first four horses in a Superfecta race, or would arrange that a harness racing horse would finish in an agreed upon position in a Superfecta race. The

1 4
2 defendants and co-conspirators would then place
3 wagers at the track and with the Off Track Betting
4 Corporation on the races in which the outcomes had
5 been arranged.

6 "It was further part of said conspiracy that
7 defendant harness racing drivers and co-conspirators
8 would accept bribes and aid and abet in accepting
9 bribes to influence the outcome of the aforesaid
10 races.

11 "It was further part of said conspiracy that
12 the defendants and co-conspirators would conceal the
13 existence of the conspiracy and would take steps
14 designed to prevent the disclosure of their
15 activities."

16 That is the charge the government undertook
17 to prove.

18 The fact that I have read it doesn't add any
19 weight to the charge.

20 Some of the defendants named in the indict-
21 ment have not been on trial here; some of them are
22 out of this trial for various reasons. Two of them,
23 Messrs. Pullman and Rothstein have been witnesses.
24 The reasons why the other defendants are not part
25 of this trial have nothing to do with the guilt or

innocence of any of the defendants who are on trial.

There is nothing wrong in law with Mr. Dillon having had a draft of the indictment a month before the grand jury voted on it, as was mentioned yesterday. Most of the witnesses had already been interviewed and many of them had testified as you have heard from the examination of the witnesses here. If the grand jury did not vote the indictment, the draft would simply be a piece of paper to file away among other closed matters.

The indictment is based on charges of violation of Section 224 of Title 18 of the United States Code, which says:

"(a) Whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of said scheme is to influence by bribery that contest," shall be fined or imprisoned or both.

I don't talk here about the range of penalties because that is for me to determine and on the basis of information that will be submitted after the trial

1
2 by the Probation Department, if there is a guilty
3 verdict against any defendant. I think I should
4 point out, though, that punishment for bribery is
5 not any greater than punishment for perjury, as
6 Mr. Rollack seemed to suggest yesterday in discussing
7 Mr. Kraft's testimony.

8 There are two terms in the statute that I
9 read which are defined later in the statute.

10 The section provides that the term "scheme
11 in commerce" means any scheme effectuated in whole
12 or in part through the use in interstate or foreign
13 commerce of any facility for transportation or
14 communication.

15 And it further says:

16 The term "sporting contest" means any contest
17 in any sport, between individual contestants or
18 teams of contestants (without regard to the amateur
19 or professional status of the contestants there),
20 the occurrence of which is publicly announced before
21 its occurrence.

22 I had determined before we began the trial as
23 a matter of law that drivers in harness races are
24 contestants in sporting contests and that harness
25 races are sporting contests within the meaning of

the statute.

You will have noticed that the statute applies to anyone who carries into effect, attempts to carry into effect, or conspires to carry into effect, a scheme of bribery. To attempt an offense means wilfully to do some act designed to bring about something that the law forbids to be done.

The first count in the indictment charges that the defendants carried into effect or attempted to carry into effect such a scheme. The second count charges that they conspired to carry it into effect.

In connection with the first count, I should also read Section (2)(a) of Title 18 of the United States Code, which is submitted in the indictment and which states:

"Whoever commits an offense against the United States or aids, abets, counsels, or commands, induces or procures its commission, is punishable as a principal."

That means that anyone who knowingly helps in carrying out a scheme for influencing a sporting contest by bribery is just as guilty as the person who initiated the scheme.

Charge of the Court

1
2 THE COURT: (Cont'd) In determining guilt or
3 innocence, we generally refer to the essential ele-
4 ments of a crime.

5 In connection with the sports bribery statute,
6 the requirements may be divided into five essential
7 elements. First, that there be a scheme of bribery;
8 second, that the purpose of the scheme be to influence
9 a sporting contest in any way; third, that each
10 defendant have knowledge that the purpose of the
11 scheme is to influence a sporting contest by bribery;
12 fourth, that the defendant in connection with the
13 first count carry the scheme into effect or attempt
14 to carry it into effect or aid in carrying it into
15 effect.

16 In connection with the second count, the
17 fourth element would be that the defendant become a
18 member of the conspiracy with some other person to
19 carry the scheme into effect.

20 The fifth element is that the scheme be in
21 commerce, involving the use of some facility of inter-
22 state transportation or communication.

23 The first issue that there be a scheme in
24 bribery presents one of the basic questions here,
25 whether this was an effort to bribe drivers or whether

Charge of the Court

it involved just handicapping.

With respect to the purpose of the scheme to influence a sporting contest, I think is not in serious dispute. If the first element is established to your satisfaction, that there was a scheme of bribery, the third, knowledge that the purpose was to influence a sporting contest by a bribe, requires proof of specific intent. This means more than the general intent to commit the act charged.

In order to establish specific intent, the Government must prove that each defendant knowingly committed the offense charged and purposely intended to carry out or help carry out a scheme to influence a sporting contest by bribery.

The word "willfully" as used in the indictment means that any act must have been committed by a defendant voluntarily, with the purpose of violating the law and not by any mistake or accident.

In connection with proof of knowledge, in order to establish the third element of the crime that I have described above, the rule is that knowledge, even though it is a state of mind, may be proved by a defendant's conduct and by all the facts and circumstances surrounding the case. Further, no person can

3

Charge of the Court

intentionally avoid knowledge by closing his eyes to facts which should prompt him to investigate.

The fourth element that the defendant should do something to carry the scheme into effect or attempt to carry it into effect or aid in carrying it into effect, I think should be clear. You will have to determine whether that has been established by the evidence.

The fifth element that the scheme, if it existed, was one in commerce, I think, is not seriously disputed. The use of interstate facilities such as the Holland Tunnel, the Lincoln Tunnel, the George Washington Bridge, telephone calls from New York to other states, flights into LaGuardia Airport, transportation of money between New York and other states, these would constitute the use in interstate commerce of a facility for transportation or communication.

The Government does not have to show that a particular defendant thought about interstate commerce or deliberately planned to use a facility of interstate commerce. It is a matter that is necessary for the jurisdiction of this Court. It makes it a Federal crime instead of a State crime.

If it is established, if you find that the

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Charge of the Court

scheme was effectuated in whole or in part through use of interstate commerce of any facility for transportation or communication, then the fifth element of the offense is proved.

Each of the elements of the crime that I have described above must be established beyond a reasonable doubt. The second count of the indictment charges conspiracy to influence harness races by bribery. You have heard something during the course of the trial about the rules concerning statements by co-conspirators.

The gist of the crime of conspiracy is an unlawful combination or agreement to violate the law. In determining whether a defendant is guilty of conspiracy, it makes no difference whether the defendants accomplished what it is alleged they conspired to do. An unsuccessful conspiracy is still a violation of the statute. A conspiracy has sometimes been called a partnership for criminal purposes in which each member becomes the agent of every other member. That is the reason why testimony of co-conspirators about what a defendant or another co-conspirator said during the conspiracy and in furtherance of the conspiracy is admissible. But the Government has the

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burden of proving beyond a reasonable doubt that each defendant became a member of the conspiracy and was knowingly and willfully a member of the conspiracy during the period involved.

The Government does not have to show in connection with the conspiracy charge that the persons involved met together and entered into an express or formal agreement, setting forth what the scheme was or how it was to be carried out or what each person should do.

A conspiracy may be inferred from the circumstances and the conduct of the parties. Since ordinarily a criminal conspiracy is characterized by secrecy, conspirators do not usually reduce their agreements to writing or acknowledge them before a notary public or broadcast their plans. It is sufficient if you find that two or more persons impliedly or tacitly came to a common understanding to violate the sports bribery law.

You can judge the acts and conduct of the alleged co-conspirators and apply the adage that was mentioned in the summations that actions speak louder than words. Frequently the only evidence available in a conspiracy case is disconnected acts on the part of the alleged individual conspirators, which when

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taken together show a conspiracy to secure a particular result.

In determining whether a conspiracy existed, you may consider the acts and declarations of all the alleged participants, both defendants and unindicted co-conspirators, but in determining whether a particular defendant was a member of the conspiracy, you should consider only his own acts and statements.

A defendant cannot be bound by the acts or declarations of other persons until it is first established to your satisfaction that a conspiracy in fact existed and that the defendant became one of its members.

However, statements of alleged co-conspirators may sometimes be treated as verbal acts, which regardless of their truth, may help you to interpret the actions of a defendant which are in a time frame or a space frame related to those statements of co-conspirators.

The Government has introduced testimony as to statements allegedly made by Mr. Gerry between January and April of 1973, that he had Mr. Insko in his pocket. You are instructed that even if you should conclude that such statements were made by

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Mr. Gerry, they are not binding on Mr. Insko unless you find, by non-hearsay evidence, that Mr. Insko was a member of a single conspiracy with Forrest Gerry.

In order to be a member of a conspiracy, a defendant does not need to know all the other members of the conspiracy or all the details of the conspiracy or exactly how the objects of the conspiracy are to be accomplished. And here I think there is no evidence that most of the drivers knew any of the non-driver defendants except Mr. Gerry. But if a defendant knows that he is taking part in a general plan to violate the law, he may be regarded as a member of the conspiracy or the joint venture. One who joins a conspiracy takes it as he finds it and he is responsible for the acts of co-conspirators and for their statements even before he joined them.

Each member of a conspiracy may perform separate and distinct acts. Here Mr. Gerry is charged with giving bribes and making and cashing bets to profit from those bribes. The drivers are charged with receiving bribes. Some non-driver defendants are charged with placing bets, and some with collecting bets in order to realize the profits of the alleged bribery, and some primarily were providing money to

Charge of the Court

make the bets. Each of these may be a member of the conspiracy and each may know that the scheme requires the participation of many other people. But the Government just first prove, beyond a reasonable doubt, that each defendant knew of the common purpose of the conspiracy and was a willing participant with the intent to advance the alleged purpose of the conspiracy.

While, as I have said, it is not necessary to prove the success of a conspiracy in order to establish guilt, proof of the accomplishment of the objects of the conspiracy may be persuasive evidence of the existence of the conspiracy. And you may find such proof from the charts that have been offered in evidence.

If at the end, though, you have a reasonable doubt, either that there was a conspiracy for sports bribery or that any defendant was a member of the conspiracy, you must acquit that defendant. Acts and declarations of co-conspirators after the termination of the conspiracy, that is, after April 13, 1973, in this case, are binding only on those who made them, and acts and declarations even during the period of the conspiracy can be considered against other defendants only if they were made in furtherance of the conspiracy.

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and try to help accomplish it.

Before any acts or declarations may be considered against other defendants, there must, as I have indicated, be other evidence connecting the defendant with the conspiracy. As a general rule, that applies in all types of cases. Mere association with someone else is not enough evidence for conviction. An association with other conspirators is not enough to establish conspiracy. There must be other evidence from which you can infer the purpose of the association and that the defendant was knowingly a party to a scheme to influence a harness race by bribery.

For instance, the placing of telephone calls to any defendant by an alleged co-conspirator or Mr/ Cormier's giving his telephone number to Mr. Gerry should be presumed to be innocent unless the surrounding circumstances indicate to you that the telephone calls had a bearing on the alleged conspiracy. And so, from Insko's attending parties with certain co-defendants should be presumed to be an innocent act unless all the circumstances persuade you that he was a party to a scheme to influence harness races by bribery.

I guess when I said there was no evidence that

driver defendants knew anyone but Mr. Gerry.

Mr. Pullman was at the party with Mr. Insko. Mr. Perry was there but he was an executive and you draw whatever inferences you think are proper from that.

There is also a rule that on a conspiracy charge, the Government just allege and prove a single over-all conspiracy. The Government's theory is that Mr. Gerry was the central figure in a far-reaching conspiracy, and that he made contact with the drivers and he provided the combinations on which various people made bets on Superfectas.

As I said, a member of a conspiracy does not need to know all the members. But still, if you find that there were several distinct conspiracies, then you have to acquit all the defendants except Mr. Gerry on the conspiracy charge.

The first count charges all the defendants were actually carrying into effect or attempting to carry into effect or help each other carry into effect a scheme of sports bribery. Basically the same rules of evidence apply to the first count as to the second.

Where there is a join venture to commit a crime, the declarations of participants in the joint venture are admissible against other defendants even though

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there is no specific conspiracy charge. So you can consider out of Court declarations of other defendants and other participants of the scheme, while the scheme was in progress and for the purpose of carrying it out, against all members of the join venture provided that you find that a particular defendant was knowingly a party to the scheme.

It is possible to find any defendant to be guilty or not guilty on either the first count or the second count or on both counts, with one exception. Since all the races in which Mr. Myer was charged took place at Yonkers, which is in the Southern District of New York, you cannot find him guilty on the substantive count unless you find that he was present in the Chemical Bank office in Long Island City to collect bribe money. But you can find him guilty on the conspiracy count without his presence there because the conspiracy took place both in the Southern District, which includes Manhattan, Bronx and Westchester, and in this district.

Before I turn to the evaluation of evidence, I will remind you that the Government has the burden of proving each of the elements of a particular count of the indictment beyond a reasonable doubt,

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2 that this burden rests with the Government throughout
3 the trial, and that there is no burden on any defendant
4 to produce any evidence.

5 If you have a reasonable doubt as to any
6 element of the crime, you must acquit. But if you
7 are persuaded beyond a reasonable doubt with respect
8 to all the elements of any count with respect to
9 any defendant, you must bring in a verdict of guilty
10 on that count.

11 Mr. Soeman asked yesterday why more drivers
12 have not been indicted. That is not a matter which
13 concerns this case. Apart from other drivers having
14 been left out of betting patterns, we have not had
15 a great deal of evidence here as to what their relations
16 were with Mr. Gerry or their involvement in the bribes.
17 Your job is just to evaluate the evidence against
18 the defendants who are on trial here.

19 Now, with respect to the rules for evaluating
20 evidence, the first thing I will mention is that there
21 are two types of evidence that are generally relied
22 on in finding the truth as to facts. One is direct
23 evidence like the testimony of an eyewitness. The
24 other is indirect or circumstantial evidence, which
25 is the proof of a chain of circumstances that logically

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2 points to the existence or non-existence of certain
3 facts. Most of the evidence of bribery in this case
4 is circumstantial in character, except perhaps the
5 testimony of Mr. Gerry's own statements to Mr. Cantor,
6 Mr. Randy Perry and Mr. Kraft, Mr. Provan's Grand
7 Jury testimony about giving a bribe to Mr. Ross,
8 and perhaps some of the other statements about
9 Mr. Gerry's scheme.

10 I don't claim to have covered all the evidence
11 on that. Generally the law makes no distinction
12 between circumstantial evidence and direct evidence.
13 Circumstantial evidence alone may be enough to convict
14 a defendant, if you find him guilty beyond a reasonable
15 doubt on the whole case. Circumstantial evidence does
16 not have to exclude every reasonable hypothesis
17 of innocence in order to point toward guilt. But it
18 is necessary that you be satisfied of a defendant's
19 guilt beyond a reasonable doubt on the basis of all
20 the evidence in the case. So if you find at the end
21 that on all the evidence it is reasonably possible
22 that he is innocent and also reasonably possible
23 that he is guilty, you have to find a verdict of not
24 guilty. And if you find that all the evidence in the
25 case is just as consistent with any defendant's

innocence as with his guilt, you must acquit that defendant. But if you find that the evidence points to guilt beyond a reasonable doubt, you must find a verdict of guilty.

You have been told properly during the summations that you do not leave your common sense outside the door when you go into the Jury room to deliberate. When you analyze testimony, you can draw reasonable inferences based on your own common sense and general experiences. But only from facts that you find are proved, not from any other facts bearing on the case that you know from something else. You are not confined to the bare bones of the testimony or the exhibits. But you cannot make a finding that is based on mere speculation or conjecture.

Mr. Winograd yesterday asked you to imagine what took place between an FBI agent and a witness who had not put on a tape recorder like Mr. Pullman. You can draw inferences that you believe are supported by evidence but you should not rely on imagination either to convict or to acquit any defendant. And I doubt if that is what Mr. Winograd really meant.

When there are different inferences that can be drawn from evidence, you are not limited to drawing

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2 only those that are favorable to the accused. It
3 is your province as trier of the facts to determine
4 what inferences should most probably be drawn and
5 then to determine whether these inferences, together
6 with the rest of the evidence, point to guilt beyond
7 a reasonable doubt or leave you with a reasonable
8 doubt.

9 While bribery requires proof that a bribe
10 was offered and in the case of a driver, that the
11 bribe was received with the driver's knowledge
12 of the purpose, it is not necessary for the Government
13 to produce eyewitnesses of the bribes. The Jury
14 may infer from the circumstances where a bribe was
15 in fact offered or received.

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17 (Continued on next page.)
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2 THE COURT: (Continuing) Now, I come to the
3 credibility of witnesses, which is an important
4 and difficult part of your task.

5 When you weigh the testimony of a witness,
6 you can consider both what you heard and what you
7 observed as he was on the witness stand. You should
8 consider the relationship of the witness to the
9 Government or to a defendant.

10 You can consider any bias of the witness, any
11 interest he or she may have in the outcome of the
12 case. And this may include a sympathetic interest,
13 as well as a financial interest. You should consider
14 the witness' manner while he was testifying and
15 the candor and intelligence of the witness. You
16 can consider the probability or improbability of the
17 testimony itself, and in relation to the other
18 testimony in the case.

19 You should give careful thought to the extent
20 to which any testimony has been corroborated or
21 contradicted by other credible evidence, and to any
22 inconsistency within the testimony of a witness,
23 either on direct examination or cross-examination
24 and whether any witness changed his testimony.

25 If you find that a witness was lying in some

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2 respect, you can say you will not believe anything
3 he said; if he is false in one statement he is
4 false in all..

5 However, the usual nature of cross-examination
6 asks you to believe that some of the statements
7 a witness made on cross-examination were true and
8 to use them as a basis for disbelieving what he
9 said on direct examination. So you have a right to
10 say that part of what a witness said on the stand
11 is true and part is not. And you may consider that
12 a witness can be mistaken in part of his or her
13 testimony and be correct and truthful with respect
14 to other parts.

15 I find little significance in calling names.
16 You should judge the credibility of specific items
17 of testimony given by individual witnesses. Some
18 defense counsel may call witnesses thieves or liars,
19 but that does not mean that they may not have been
20 telling the truth here or before the Grand Jury.
21 You should determine.

22 Evidence that a witness said something or did
23 something at another time which is inconsistent
24 with his present testimony may be used to discredit
25 or impeach his testimony. In the same way, evidence

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2 that he said something at an earlier time consistent
3 with his present testimony may be used to show that
4 his present testimony was not a recent invention
5 of his mind.

6 In general, a witness' recollection is likely
7 to be better at a time closer to the event about
8 which he is testifying. So testimony given to a
9 Grand Jury or statements made before the Grand Jury
10 appearance may be more reliable than statements
11 made later on.

12 So you could find that the prior Grand Jury
13 testimony of Marvin Proman and Joseph Pullman and
14 Seymour Rothstein is truthful and that their incon-
15 sistent testimony at the trial or even their failure
16 to identify a defendant is either a deliberate
17 failure to remember facts which they did remember
18 or a present failure of memory. And you may consider
19 that they made statements similar to the Grand Jury
20 testimony prior and subsequent and you can consider
21 Agent West's testimony that Mr. Proman had told him
22 in California that his Grand Jury testimony was
23 truthful and that he had been told to take a vaca-
24 tion.

25 Now, let me say here, there was reference to

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2 who would benefit by his taking a vacation. I do not
3 think there is any evidence in the case to connect
4 a particular defendant or -- with that act. You can
5 determine whether there is any significance to his
6 having had Mr. Gerry's telephone with him.

7 But the fact that any defendant may have
8 wanted him not to be here should not spill over and
9 cause any unfavorable attitude on your part toward
10 any other defendant.

11 You can consider whether a witness has a motive
12 or interest to testify in a particular way. If
13 the Government witness has been promised immunity
14 or is awaiting trial or sentence, this may have a
15 bearing on his willingness to slant his testimony
16 against the defendants or even to lie.

17 If you find that a Government attorney or agent
18 has induced a witness to testify falsely, of course,
19 you should reject that testimony and you may reject
20 all his testimony. You can consider whether Allen
21 Cantor and/or David Kraft had any personal motives
22 to reduce their penalties for their own misconduct.

23 But a possible motive to lie does not mean
24 that a witness necessarily lied.

25 Now, counsel on both sides have a duty of

1 acting within the rules of justice. The prosecuting
2 attorney should act with earnestness and vigor but
3 he has a twofold duty, to see that the guilty shall
4 not escape and the innocent shall not suffer.
5

6 While he may strike hard blows, he is not at
7 liberty to strike foul ones and it is just as much
8 his duty to refrain from improper methods, calculated
9 to produce a wrongful conviction, as it is to use every
10 legitimate means to bring about a just one.

11 Defense counsel in turn are obligated to pro-
12 ceed with respect for the dignity of the courtroom
13 and to show professional respect toward the Judge,
14 the opposing counsel, witnesses and jurors.

15 The defendants ask you to infer, because
16 some improper promises have been made to Mr. Pullman,
17 while he was wearing a tape recorder in April, 1974,
18 that his Grand Jury testimony and that of others
19 was similarly induced.

20 That's an inference you may draw, but in this
21 connection you should consider the motives that
22 Mr. Pullman may have had in carrying a tape recorder
23 after he had talked with one of the defendants and
24 his attorney and the fact that he had once agreed
25 to plead guilty and now wanted to get a grant of

immunity.

One thing that I find interesting is that after all the assurances that the FBI agent and Mr. Pollack gave Mr. Pullman about not going to jail he did not plead guilty and take his chances on the sentence I might impose. But he insisted on being granted testimonial immunity and it was granted to him.

Now, there is a thing called accomplice testimony which has special rules. The Government has offered a substantial amount of accomplice testimony. An accomplice is a co-defendant or a co-conspirator who has assisted in the perpetration of the alleged crime that is on trial.

Since such a witness has confessed to performing an illegal act, and since he has an incentive to testify in such a way as to minimize his own punishment, the testimony of an accomplice should be viewed with caution and received with care.

Nevertheless, you have a right to believe the uncorroborated testimony of an accomplice, if you find it to be credible, and you should carefully consider the extent to which exhibits or other testimony confirm details of what the accomplice has said.

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2 The fact that a defendant has pleaded guilty,
3 like Mr. Rothstein and removed himself from the case,
4 or Mr. Kraft, does not mean that any less evidence
5 is necessary to prove the guilt of the remaining
6 defendants.

7 Their guilt must be separately considered
8 and proved beyond a reasonable doubt. When Mr. Wino-
9 grad said in his summation that the Government
10 vouches for the credibility of a witness whom it asks
11 to take the stand I said that that was not a correct
12 statement of the law.

13 It is unprofessional conduct for a prosecutor
14 knowingly to offer false evidence or to fail to seek
15 withdrawal of such evidence upon discovery of its
16 falsehood. But the credibility of a witness may be
17 attached by any party, including the party calling
18 him. Since a party rarely has a free choice in
19 selecting witnesses, he might be at the mercy of the
20 witness and the adversary, unless he could impeach
21 a witness that he called, by using prior statements
22 or by other admissible testimony.

23 We spent a long time in this case on charts.
24 Charts and summaries prepared by Mr. Shagan and
25 Mr. Gianturco have been received in evidence. As I

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2 said at the time, these have been received only as
3 an aid to you in understanding the underlying documents
4 which were received in evidence , including boxes of
5 IRS form 1099s, computer printouts of OTB betting
6 records, OTB Superfecta tickets and OTB agent settlement
7 sheets.

8 These charts may be used by you as evidence
9 without analyzing all the underlying paper work,
10 to the extent that you believe that they are accurate
11 or undisputed but you may reject them if you believe
12 they are not consistent with the basic record.

13 There is a special rule concerning expert
14 witnesses. Normally, witnesses may not testify as
15 to their opinions. But those who have become expert
16 in some science or calling may state an opinion as
17 to relevant and material matters and state their
18 reasons for their opinions.

19 You are not bound by the opinion of an expert.
20 You can consider the extent of his knowledge, his
21 possible interest in the outcome of the case, the
22 soundness of the reasons for the opinion and the
23 credibility of the result.

24 Dr. Yaspan testified as a statistical expert
25 for the Government and some former drivers and

harness racing judges testified as experts for the defendants.

As I said, you may consider their evidence but you are not bound by it.

Now, Bruce Cussell admitted that he had been in a mental institution on several occasions and defense counsel have referred to the hospital records. A person is not disqualified as a witness simply by reason of his mental problems or because he has taken some medication.

His competency depends on his capacity and intelligence at the time he testified, and at the time of the events about which he testifies, and on his appreciation of his duty to tell the truth.

You should consider not only the nature of Mr. Cussell's mental problems but his demeanor on the stand, his capacity to observe and recollect facts, his ability to understand questions put to him and to answer them intelligently and whether he impresses you as a truth-telling individual.

If you find that he did in fact purchase or cash tickets at the time shown in the charts, you can consider whether the trust which some of the

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2 defendants are alleged to have put in him has a
3 bearing on his reliability as a witness in this
4 trial.

5 And again, you should consider the extent
6 to which details of his testimony are corroborated
7 or contradicted by other evidence in the case. I am
8 more than half through so I guess I will finish with
9 the two hours that I predicted yesterday, and unless
10 Mr. Mele wishes otherwise, I am going to continue
11 without a break.

12 Intentional concealment of information after
13 the commission of a crime is a fact that may be
14 considered as showing consciousness of guilt. If you
15 believe the testimony of James Murphy that he bet
16 for Mr. Gerry and that Mr. Gerry told him to tell
17 the FBI if they came to him that he knew Mr. Gerry
18 but never bet for him, you can consider this as
19 bearing on whether Mr. Gerry exhibited a consciousness
20 of guilt of sport bribery. But only against Mr. Gerry.

21 Mr. Pollack spoke of threats by Mr. Pullman
22 against Kenneth Miller. Actually, I think Mr. Miller's
23 testimony was that threats were conveyed to his wife
24 and Mr. Pullman was mentioned in the question but not
25 in the answer. So the testimony may have less

bearing on credibility than appeared but you are entitled to ask for the testimony on that, if you wish.

There was testimony by Mr. Haberstroh about bribes given to Elden Turcotte in 1960 and by Mr. Zito about fixing races in the same period with Mr. McNutt and Mr. Webster.

This testimony was admitted as evidence of prior similar acts and only against those defendants. It may not be considered as evidence that Mr. Turcotte or Mr. McNutt have any criminal characteristics, but you may consider it, if you believe it, as bearing on the intent or design of the defendants in the races that are involved.

There has been reference at the trial to the varying number of particular races in which particular defendants were charged with being influenced by a bribe. It is not necessary for the Government to prove that bribes were received in any particular number of races. The purpose of a Bill of Particulars is to help the defendants prepare and to limit the Government's proof.

The Government cannot prove bribes in races

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2 that were not in its Bill of Particulars. But it
3 does not have to prove all those. Participation in
4 a scheme to influence sporting contests by bribery
5 may be established by proof that a defendant driver
6 received a bribe in a single race.

7 However, you can, of course, consider if the
8 Government charged four bribes or 15 bribes against
9 a particular defendant and has evidence of only
10 one, whether that cast doubt on the one. Some of
11 the defendants' witnesses were related to the harness
12 racing industry.

13 You can consider their interest in protecting
14 the reputation of the industry or their careers in
15 the industry, or their investments in harness racing
16 and whether that affected their testimony or their
17 credibility.

18 For instance, Mr. Levy's statement that he
19 did not have the slightest idea of corruption may
20 reflect his desire not to believe anything bad about
21 the sport which he had devoted the last 30 years of his
22 life. Or it may have reflected a justified belief
23 in the ability of judges around the track to see if
24 anything was wrong.

25 You are to judge that. Mr. Insko introduced

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2 evidence tending to show his good reputation for
3 honesty and integrity. This is a fact that you may
4 properly consider, as tending to show that a person
5 of such character would not be likely to commit the
6 offense charged against him. And it may be enough
7 to create a reasonable doubt.

8 If after considering all the evidence in the
9 case, including the character evidence, you have
10 a reasonable doubt of Mr. Insko's guilt, you should
11 acquit him. But if you believe beyond a reasonable
12 doubt that he committed the offense charged against
13 him, you should convict him, notwithstanding that
14 he had a good reputation for honesty.

15 With respect to Judge Leake's testimony,
16 you may also consider that he testified only of
17 Mr. Insko's reputation in Illinois, and not of his
18 reputation in the Harness Racing Industry in New York
19 City.

20 Your decision of the case does not depend upon
21 the number of witnesses testifying for one side or
22 the other. The fact that the Government called many
23 more witnesses than the defense is not a fact of
24 particular significance. Your decision depends
25 on the quality of the evidence and not on the quantity.

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2 You must determine the credibility of the
3 individual witness. Some of the Government witnesses
4 have been FBI agents. A witness' testimony does not
5 gain weight or lose weight because of the fact that
6 he is a Government agent. You should evaluate the
7 testimony of a Government agent in the same manner
8 as the testimony of other witnesses.

9 You should decide the case solely on the
10 evidence presented in the courtroom. The evidence
11 includes testimony, exhibits and stipulations and
12 the films that you watched. You should disregard
13 anything that I struck out and told you not to con-
14 sider.

15 You must completely disregard any press,
16 television or radio reports, if any have come in
17 contact with them and should not be influenced by
18 them in any manner whatsoever.

19 I think this is repetitious but it is one I
20 have been asked. I will give it again.

21 Statements made by a defendant or a co-conspirator
22 during the existence of the conspiracy are admissible
23 against all conspirators.

24 Statements or acts of a defendant after the
25 end of the alleged conspiracy are admissible against

1
2 that defendant, if they are relevant to the pro-
3 secution's case, but you must be careful not to
4 consider them against any other defendant.

5 For instance, the statement of Mr. Gerry
6 which Special Agent Hilly said he overheard in
7 August, 1973, at David Kraft's home, may be considered,
8 if you believe Agent Hilly, as an admission that
9 Mr. Gerry fixed Superfecta races and met with some
10 drivers and paid them cash but it may not be con-
11 sidered as proof against any of the eight drivers
12 who are defendants at this time or even against
13 the other non-driver defendants.

14 Similarly, Mr. Insko's statement, that it
15 appeared to him in December that the purpose of
16 the party for him where Mr. Gerry and Mr. Pullman
17 and Mr. Perry are alleged to have been present,
18 was to butter him up. That is admissible against
19 him but it may not be considered against the other
20 defendants and it is only circumstantial evidence,
21 in any event.

22 Defendants asked questions about the arrest
23 of Mr. Proman. The statute provides that a material
24 witness may be arrested and held on bail if his
25 presence at a trial is important and his release

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2 might create a risk that he would not be present
3 to testify,

4 Such a witness does not need any warning
5 before being questioned, as long as his answers are
6 not used to convict him of a crime.

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2 THE COURT: (continuing): Another rule relates
3 to the failure of a party to produce evidence which
4 is under his control. Where such evidence is not
5 produced, you may infer that the evidence would not
6 be favorable to the party who could have produced
7 it and did not. But you may not guess as to what
8 the evidence would be.

9 Where the evidence is equally available to
10 both parties, the failure to produce the evidence is
11 open to an inference against both parties, the
12 particular strength of the evidence depending on
13 the circumstance.

14 This does not mean that a party must call
15 every possible witness on every point.

16 You should decide whether the government
17 indicated any weakness by not calling more tellers
18 or more FBI agents or other witnesses of any sort.

19 With respect to the tapes of conversations
20 between Mr. Pullman and the prosecution which I
21 said I would receive if the defense produced an
22 accurate transcript, you may infer that the defend-
23 ants would not have found anything more favorable in
24 the case than was contained in the portions of the
25 rough transcripts which they used on cross-examination
of individual witnesses.

2 Charge

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3 But you can also consider that the government
4 had an equal opportunity and the same amount of time
5 to complete and correct the rough transcripts, if
6 it did desire to do so, and you may infer that the
7 remainder of the tapes would not have helped the
8 government. It is up to you what inference, if any,
9 to draw.

10 I am going to just read again what I said to
11 the jury on May 22nd about that, which was at the
12 close of the case. I said on April 29 at page 5650 --
13 and I am reading from page 9134 -- "that I was not
14 going to undertake the burden of transcription
15 beyond what I had already done." I said that "I would
16 not permit the use of any tapes until all tapes
17 alleged as the prosecutorial misconduct have been
18 made available, including transcripts, and that it
19 should be up to the defendants to prepare them. There
20 was nothing to prevent the government from preparing
21 them. I have thus far not had any transcripts from
22 the defendants, and I have not had any offer by the
23 defendants of tapes that I thought met the require-
24 ments of the jury and of clarity and I am not going
25 to permit them to be brought in now by the government
without transcripts on rebuttal."

Similarly, with respect to the films of races, you were shown films of only 14 races out of, I think, 38 that are involved in the case. You may infer that the showing of the other 24 would not have been favorable to the defendants.

But you should also bear in mind that the government could have shown those races, and that the judges who watched the races testified that they were unable to detect any misconduct from the films or from watching them, the races.

Also bear in mind that a defendant in a criminal case never has a burden to produce any evidence.

Part of the government's burden is to establish the identity of defendants beyond a reasonable doubt.

With respect to the defendant Angel, the failure of Bruce Cussell to identify him at the trial is a factor which you should consider.

If there is a reasonable doubt that Mr. Angel was the person who Mr. Cussell saw on the basis of all the evidence in the case, you should acquit Mr. Angel, but, of course, you should convict him if you are satisfied of his guilt beyond a reasonable doubt on all the evidence, and you have heard

4 Charge

1
2 Mr. Zraick and Mr. Pollack describe what the evidence
3 is.

4 Eyewitness testimony may seem persuasive but
5 is not the most reliable testimony. You can consider
6 your own experience in remembering the faces of
7 people whom you saw days or weeks or months ago and
8 determine how much corroborative evidence is
9 necessary before you accept eyewitness identification.

10 Your role as judges of the facts permits you
11 even to reject uncontradicted evidence, not only of
12 experts, but of other witnesses, if the appearance
13 of the witness or the improbability of the testimony
14 leads you to do so.

15 Now, whatever opinions any of you have about
16 the racing industry or about betting on races
17 should not be considered during your deliberations
18 in this case. This is not a trial of the racing
19 industry.

20 Your function as jurors is to determine
21 whether, based upon the evidence in this case, the
22 government has sustained its burden of proof as to
23 the two counts of the indictment, as to any or all
24 of the defendants.

25 A Federal judge has a right to comment on the

evidence, provided he makes it plain that the decision on the facts is entirely the responsibility of the jury.

The government's case is a sort of mosaic composed of a lot of bits and pieces of various sizes. Sometimes it was tiresome to watch the little pieces being fitted in.

I am going to mention just a few matters that illustrate the application of the general rules I have discussed on evaluation of evidence and something about the differences with respect to the various defendants that may help you in arriving at your verdict.

There are an unusual number of issues of credibility in this case. The defense has attacked particularly the testimony of Mr. Cantor, Mr. Cussell,

6 Charge

Mr. Kraft, Mr. Pullman, Mr. Proman, Mr. Rothstein and Mrs. Tzavis, who is listed on the charts as Michelle Graziano, and one or two other names. Various grounds of attack are asserted, ranging from hope of avoiding penalties, to lack of mental capacity, to subornation of perjury.

Messrs. Proman, Pullman and Rothstein assert that the sworn testimony they gave before the grand jury was not true, and that they had been induced by the government to testify falsely.

Of course the government has no right to offer false testimony, but recantation of sworn testimony is always open to a certain degree of suspicion and should be viewed with caution.

The likelihood of seven witnesses being willing to tell lies that might put innocent people at risk of jail sentence is probably much less than the likelihood that one or two witnesses would do so. But anything is possible.

You must evaluate the credibility of each witness and determine whether the attacks on credibility create only a possible doubt, or whether there is a reasonable doubt on the whole case about the guilt of each defendant.

7

Charge

There has been some talk about whether there was a subpoena which required Mr. Provan to be here. I do not think that is an important issue with respect to him. The subpoena directed him to be here on May 11th and he was not brought up before me to be told that he should be here when called. But he left his telephone number with Mr. Pollack and you may infer whether his changing his name and moving away where he could not be found without great effort by the FBI creates any inferences with respect to his desire not to give testimony that would hurt his friends in the harness racing or what other reason there may have been for his taking such a long vacation.

Mr. Kraft, who had known Mr. Gerry since 1965, said that he bet as he did because he believed that Mr. Gerry was bribing drivers, as he told him.

The reason why a good handicapper might rely on bribery may be seen from Mr. Dean's statement, that even after you have considered all the logical reasons for making a certain bet, you still have the feeling that something is going to go wrong.

There is no evidence of how long Mr. Perry or Mr. Vario had been acquainted with Mr. Gerry, or

1 8 Charge

2 whether Mr. Angel knew him at all.

3 If they were in fact betting on Mr. Gerry's
4 recommendations, you may consider whether they would
5 have done so if they believed his recommendations were
6 based only on his handicapping skill and his proper
7 inside information, with no bribery of drivers to
8 reduce the risk that something might go wrong.

9 When you analyze the evidence, I think you
10 should first consider whether Forrest Gerry, Jr., is
11 guilty or not guilty, because he is the one who is
12 charged with having given the bribes and having
13 furnished the information about the horses and drivers
14 and who should be left out in particular races or
15 keyed in particular races.

16 If Mr. Gerry is not guilty, I do not believe
17 you can find anyone else guilty in the case. But
18 Mr. Gerry may be found guilty, even if no other
19 defendant is guilty.

20 (continued on following page)

Charge of the Court

THE COURT: (Continuing.) If you believe the testimony of Mr. Proman or Mr. Cantor or Mr. Randy Perry, that they were offered bribes, you may find that Mr. Gerry was guilty.

Even if Mr. Cantor rode to win, after being bribed to stay out of the first four, his acceptance of money from Mr. Gerry would constitute the offense of Sports Bribery, if you find that he received it. He had then a good hedge. He would get the driver's share of the purse if he came in the first four or he would get Mr. Gerry's money if he did not come in the first four.

Mr. Gerry's conversation with Randy Perry may be construed as an offer for a bribe, even though Mr. Gerry said he was just testing Mr. Randy Perry's honesty.

As I said before, it is not necessary that the bribe effort be successful.

The implication in the cross-examination of Mr. Kraft was that Mr. Gerry was a con artist, who induced his betting clients to pay him money that he represented to be bribes but that he never actually bribed anybody or attempted to bribe anybody and just put the money in his own pocket.

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Charge

1
2 If you find that this is so, then you should
3 find Mr. Gerry not guilty and the rest of the de-
4 fendants not guilty.

5 Mr. Gerry, like other defendants, may have
6 violated the federal statute against giving false
7 statements to the Internal Revenue Service, but no
8 one is on trial for that in this case and you cannot
9 convict anyone of Sports Bribery simply because he
10 took part in filing of false 1099 forms.

11 You might go next, after you have considered
12 Mr. Gerry, either to the driver-defendants or the
13 remaining non-driver-defendants.

14 Among the non-driver-defendants I suggest
15 that you determine the guilt of defendants Angell,
16 Perry and Vario after Mr. Gerry, since they are the
17 ones who were described as the leaders of the
18 Brooklyn betting group.

19 You should consider the credibility of the
20 witnesses, particularly Mr. Cussell, and judge the
21 guilt of the three separately. They may one or all
22 be guilty or not guilty in any combination.

23 Next among the non-driver-defendants would
24 come Messrs. Annichario, Calanna, Facciolo and Giusto.
25 Since they were alleged to have been connected in

3 Charge

various ways with the BROoklyn group, I would think you cannot find them guilty unless you found that either Mr. Perry or Mr. Vario or both were guilty.

If Mr. Perry or Mr. Vario did not know that they were part of a scheme to influence harness races by bribe, they could not have conveyed such knowledge to those who were buying tickets or cashing tickets for them.

If Mr. Perry or Mr. Vario did have such knowledge, then you can infer whether the others who were cashing substantial amounts or buying substantial amounts of tickets knew it or were just like the ten percenters that are described at race tracks and OTB offices.

With respect to the drivers, there are some differences of relationship among them. You can draw an inference from the betting patterns and from the extent to which their performance in the races conformed with the betting patterns, that they knew of the scheme or a part of it, but this may have been an innocent coincidence.

You should consider in each instance the extent of contact which was shown with Mr. Gerry and

4 Charge

1
2 the nature of that contact, and then you determine
3 whether that contact is consistent with innocence
4 or points towards guilt beyond a reasonable doubt.

5 There is evidence that Mr. Abbatiello saw
6 Mr. Gerry every Sunday, but there is also evidence
7 that this may have been simply for the purpose of
8 taking part in sock fights, and you have to deter-
9 mine the inference on that before considering the
10 accomplice testimony about his participation in
11 fixing races.

12 With respect to Mr. Cormier, the principle
13 evidence of any contact with Mr. Gerry is his
14 presence at a landing in the motel near the Roosevelt
15 Raceway, where Mr. Gerry is said to have spent time
16 during the races, if you believe that Mr. Cormier was
17 the man that Mr. Rothstein said he saw. It is not
18 essential that Mr. Rothstein place him in room 209.
19 You can draw an inference from the fact that he
20 was on a landing near that room.

21 Of course, the inference is not as strong as
22 if he were in the room and it is not the only infer-
23 ence.

24 With respect to Mr. Gilmour, there is
25 testimony concerning visits and other contacts, which

5 Charge

1
2 you are to evaluate and to consider whether these
3 contacts related to the fixing of races or whether
4 they had an innocent purpose or whether they related
5 to buying and selling horses, as Mr. Gerry did with
6 some drivers, even with drivers who testified either
7 here or in the grand jury that they received b ribs
8 from him.

9 Mr. Insko's participation and acquaintance
10 with Mr. Gerry has been described at length and I
11 am going to let you draw whatever inferences you
12 think are proper from that.

13 Mr. McNutt and Mr. Myer are the only two who
14 have been identified as having anything to do with the
15 cashing of tickets.

16 As I said, there frequently is an inherent
17 uncertainty in eye-witness identification, and you
18 should view it with caution, if it is not corroborated.

19 Neither Mr. McNutt nor Mr. Myer turned up
20 in the films which appeared to have covered almost
21 the entire period in which checks would have been
22 cashed, although perhaps not the customer's table.
23 You can judge from the evidence on that.

24 Of the three witnesses who identified them
25 as having been at the Long Island City bank, only one

6 Charge

1 I think had actually identified a photograph before
2 the trial, and in the light of the risks that both
3 of them would have run in cashing Superfecta checks
4 in a public place, you can determine whether the
5 identification may have been a case of mistaken
6 identity or whether it has sufficient weight in
7 connection with the other evidence in the case to be
8 a basis of conviction.
9

10 With respect to Mr. McNutt there was some other
11 testimony, particularly Mr. Rothstein saying that
12 he saw Mr. McNutt speak to Mr. Gerry, which may
13 have been an innocent matter. It is for your to
14 determine.

15 With respect to Mr. Myer, I think the only
16 other non-hearsay evidence of his participation in
17 the alleged conspiracy was the fact that he finished
18 out of the first four all the four times that he was
19 bet to finish out of the first four.

20 There was some testimony that a longest shot
21 in the race would on the average finish in the first
22 four about a quarter of the time. But four races
23 is such a small sample that it is not conclusive as
24 to the reason for his having finished in that
25 position and whether it is persuasive is for you to

consider in determining whether there is a reasonable doubt of his guilt.

With respect to Mr. Ross, he is the one driver about whom there is direct testimony that he received a bribe. If you believe Mr. Provan's testimony, as it was given before the grand jury, that it was true, you should find him guilty. If you do not believe Mr. Provan's grand jury testimony, I think there is no other non-hearsay evidence of contact with Mr. Gerry to support the use of the accomplice evidence against Mr. Ross.

(Continued next page.)

Charge

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With respect to Eldon Turcotte, he is charged with receiving a bribe in only one race, but there is evidence of several contacts with Mr. Gerry and of his being seen at room 209 by Mr. Rothstein.

Also, if you believe Mr. Murphy's testimony that Mr. Gerry said that Mr. Turcotte could help with French-Canadian drivers at Roosevelt, you may use this as bearing on the purpose of his contacts with Mr. Gerry.

The evidence seems to show that the racing authorities do not consider it improper for a driver to give special information to his friends. So any finding of guilt against any driver-defendant must be based on a finding that he not only gave information to Mr. Gerry, if he did, but that the evidence as a whole shows beyond a reasonable doubt that the driver was carrying out a conspiracy or an attempt to carry out a scheme in interstate commerce to influence harness races by bribery.

The defendants challenge the credibility of the evidence linking them with Mr. Gerry, and they assert that any contacts with Mr. Gerry were innocent and they strenuously attack the credibility of the main accomplice witnesses.

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3 While you have 16 defendants to consider
4 and two counts against all except Mr. Myer, you must
5 consider all that I have described, and I think there
6 are basically three possible ways that you will
7 come out on the evidence:

8 First, that Mr. Gerry was simply handicapping
9 races and induced Mr. Kraft and the Brooklyn group
10 to pay him a portion of their winning bets by
11 pretending that he was using their money to bribe
12 drivers and that no defendant is guilty;

13 Second, that Mr. Gerry in fact bribed some
14 drivers and that all or some of the non-driver
15 defendants knew that there was a scheme but there
16 is insufficient proof to establish beyond a
17 reasonable doubt that any of the drivers who are
18 defendants in this case were bribed.

19 Third, that Mr. Gerry in fact bribed one or
20 more of the driver-defendants in this case.

21 The decision rests with you.

22 Now please bear in mind that whatever I have
23 said in connection with the evidence should not be
24 taken as any suggestion by me that you should find
25 any defendant guilty or not guilty. It should not
suggest that the evidence I have discussed is the

1
2 only material evidence in the case or the most
3 important evidence. You are the judges of the facts
4 and nothing that counsel has said and nothing I have
5 said diminishes your responsibility to make your
6 own determination of the facts from your own recollec-
7 tion of the evidence and to apply the law that I have
8 set forth to those facts.

9 Now I am almost through.

10 Now I come to the final section.

11 A few words about the manner of reaching a
12 verdict. In the first place, as you know, your
13 verdict must be unanimous, you must all agree. I
14 think it is best to discuss the evidence somewhat
15 fully before you take even a tentative vote, so that
16 no one will jump to a conclusion before having weighed
17 the entire case.

18 If you want to see any exhibits that have
19 been introduced in evidence, you can give a note
20 to the marshals and they will be sent in to you.

21 If you think it is important to have some of
22 the evidence repeated, you can send in a note
23 asking for it, and I will bring you back into the
24 courtroom to hear it read, after we get everybody
25 together and find the proper part.

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3 It is Mr. Mele's responsibility as Foreman
4 to preside over your deliberations. He should make
5 sure that everybody has a chance to talk and try to
6 see that not more than one person talks at a time.
7 As you have observed, that is not always an easy
8 task, even among lawyers.

9 Mr. Mele should vote at the same time as the
10 other members of the jury, but what he says or how he
11 votes has no more importance than what any other juror
12 votes, or thinks.

13 During your deliberations, you should act as
14 judges of the facts, and not as partisans or advo-
15 cates. In that way, you are making a high contribu-
16 tion to the administration of justice.

17 You are each entitled to your own opinions,
18 but you should exchange views with your fellow
19 jurors and listen carefully to each other, as you
20 discuss the evidence or any gaps in the evidence.

21 Jurors should not hesitate to change his or her
22 initial opinion if it appears that somebody else
23 has a more accurate view of the evidence or remembers
24 more of it, but the final decision must be your own.

25 No juror should surrender an honest belief
just because of the opinion of other jurors or for the

1
2 mere purpose of reaching a unanimous verdict. You
3 don't have to join in the majority view when you
4 remain conscientiously unconvinced, just because you
5 find yourself in a minority.

6 In order to bring in a verdict of either
7 guilty or not guilty on any defendant, it must be
8 the unanimous verdict of each of the 12 jurors.

9 A guilty verdict must be based on a finding
10 of guilt beyond a reasonable doubt, and each juror
11 must be convinced of the finding in his own mind
12 before he agrees to a verdict.

13 As I have said, you should not give any
14 consideration to the matter of punishment in deter-
15 mining guilt or innocence. That will be my responsi-
16 bility if any defendant is found guilty.

17 I will just say, if a defendant is found
18 guilty on both counts, the substantive and the
19 conspiracy, he can still be given only a single
20 sentence.

21 There will be a marshal available outside the
22 jury room. You should let him know if there are
23 any questions you want to have answered or if you have
24 reached a verdict.

25 When you have reached a verdict, Mr. Mele

1
2 should give the marshal a note, simply saying that
3 you have a verdict, and then he will report the
4 verdict orally, and any party has the right to have
5 the jury polled, which means to ask each juror whether
6 he or she agrees in the verdict, so as to be sure
7 that it is unanimous.
8

9 I have prepared a form of verdict which has
10 a list of the defendants and the separate counts.
11 I have listed the non-driver defendants and the
12 driver defendants separately in alphabetical order,
13 but the order has nothing to do with the question
14 whether any particular one is guilty or not guilty.

15 Your order for lunch has gone in. I have
16 taken less time than I had anticipated on my charge.
17 I hope I haven't hurried over it too much for your
18 understanding, but it is ordered for about one
19 o'clock, and that may give you a chance to start
20 before then.

21 As to the two alternate jurors, your lunch
22 has been ordered, you may wait until it comes and
23 eat it in one of the witness rooms.

24 You have a right under the Federal criminal
25 rules to return a verdict at any time with respect
to any defendant or defendants as to whom you had

1
2 agreed, if you have reached a partial verdict before
3 you adjourn this evening.

4 We have not quite reached the climax because
5 after I complete my instructions to the jury, counsel
6 have a right to tell me whether I have left out
7 anything or misspoken on any subject.

8 If that is the case, I will bring you back for
9 further instructions, but that does not interfere
10 with your beginning your deliberations and particular-
11 ly determining what exhibits, if any, you want to have
12 sent in.

13 Since I have arranged to send you to a hotel
14 tonight, if you do not reach a verdict this afternoon,
15 except for Mr. Waters, who will be sent home in the
16 care of a marshal, but I am not directing that he
17 stay all night with you, but I suggest that you
18 sit until six o'clock or so, which will give time
19 for you to check in at the hotel and have dinner
20 before you turn in for the night.

21 You can stay later if you think it is
22 fruitful.

23 I remind you that before you were accepted
24 and sworn to act as jurors, each of you were asked
25 questions concerning your competence, qualifications,

1
2 fairness, and freedom from prejudice or sympathy.

3 The parties accepted you as jurors on the faith
4 of those answers and they remain binding on you
5 now and until you are discharged from consideration
6 of this case.

7 My final words are to say that the oath you
8 took at the beginning sums up your duty, that is --
9 without fear or favor to any man, you will well and
10 truly try the issues between the parties according
11 to the evidence given to you in court and
12 the laws of the United States.

13 Now, I think the easiest way is to have the
14 marshals sworn first, and then to take you into the
15 jury room, and then the two alternate jurors may
16 go in and get their things.

17 I certainly appreciate your having been here,
18 I won't use a racing term, but it was an assurance
19 to have somebody in case we did have an unexpected
20 catastrophe during the trial.

21 You are free to talk about the case, but I
22 think you shouldn't talk about the case to anybody
23 in the courthouse until after the verdict has been
24 reached.

25 Mr. Mele will give you your cards so that you

US COURT OF APPEALS: SECOND CIRCUIT

Index No.

USA,

Appellee,

against

Affidavit of Personal Service

PERRY & GERRY,

Appellants.

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Victor Ortega,

being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1027 Avenue St. John, Bronx, New York

That on the 31st day of October 1974 at Federal Courthouse, Cadman Plaza, Bklyn New York

deponent served the annexed *Appendices Vol. # I & II* upon

David A. Trager

the ² in this action by delivering ^{les} a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

Sworn to before me, this 31st day of October

19 74

Victor Ortega
Print name beneath signature

VICTOR ORTEGA

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

